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ABSTRACT

Since 1981, the Office for Civil Rights (OCR) of the United States Department of Education has been accused of failing to enforce the civil rights laws according to its mandate. OCR is responsible for enforcing Federal laws prohibiting discrimination on the basis of race, sex, national origin, handicap, or age in educational programs or activities funded by the Federal government by conducting complaint investigations and compliance reviews. The staff of the Committee on Education and Labor visited six of the ten OCR regional offices in 1988 in order to investigate the agency's policies and practices, including the impact of the Grove City College v. Bell and the Adams v. Bennett decisions. Conclusions include the following: (1) the OCR has been stymied by the Reagan Administration, which actively opposed the civil rights laws and took efforts to minimize the agency's potential impact; (2) some enforcement occurred, in spite of OCR leadership, by a regional staff; (3) the Adams lawsuit points up the fact that OCR's failures extend backwards to its inception; and (4) the commitment of the Bush Administration to civil rights enforcement will determine whether OCR accepts its responsibilities. The appendices include the following: (1) statistical data on 27 tables and 35 graphs; (2) an organizational chart of the OCR; (3) the mission and function statement of the OCR; (4) copies of important communications cited in the text; (5) the original complaint filed in the case of Adams v. Bennett (1970); and (6) the Adams orders of March 11 and 24, 1983. (FMW)

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[COMMITTEE PRINT]

A REPORT

ON THE

INVESTIGATION OF THE CIVIL RIGHTS ENFORCEMENT ACTIVITIES OF THE OFFICE FOR CIVIL RIGHTS U.S. DEPARTMENT OF EDUCATION

By the Majority Staff of the

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

100th Congress, Second Session

DECEMBER 1988

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

A. Introduction

In 1981, former Secretary of Education Terrel Bell wrote to Senator Paul Laxalt that:

> [T]he Federal courts may soon be after us for not enforcing civil rights laws and regulations. Your support for my efforts to decrease the undue harassment of schools and colleges would be appreciated. It seems that we have some laws that we should not have and my obligation to enforce them is against my own philosophy.[1]

The Office for Civil Rights of the U.S. Department of Education (OCR) has been the subject of several congressional hearings, reports, and court orders since that letter was written, all of which concluded that the agency has adamantly failed to enforce the civil rights laws according to its mandate.

In light of this history, and pursuant to the oversight responsibilities of the Committee on Education and Labor, Committee staff visited six of the ten OCR regional offices in January through March of 1988 in order to determine whether the OCR was enforcing the civil rights laws within its jurisdiction according to the intent of Congress.[2] Among other things, Committee staff investigated: (1) the development and dissemination of enforcement policies; (2) the use of Letters of Finding (LOFs), particularly in cases in which a violation of the civil rights laws has been found; (3) monitoring of agreements once a settlement is obtained between OCR and the school district or college/university; (4) the agency's policies and practices regarding technical assistance; (5) the status of its Quality Assurance Program; and (6) the impact of the *Grove City* v. *Bell* and *Adams* v. *Bennett* decisions upon case processing.

OCR is responsible for enforcing Federal laws which prohibit discrimination on the basis of race, sex, national origin, handicap or age in all education programs or activities funded by the Federal government. OCR's authority is derived from Title VI of Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in Federally-funded activities; and the Age Discrimination Act of 1975.

OCR enforces the above statutes by conducting complaint investigations and compliance reviews. Enforcement activity takes place in OCR's headquarters office in Washington, D.C., and in its ten regional offices. Until December 1987, OCR was mandated by the order of the Federal district court of the District of Columbia to conduct compliance activity according to specific time frames and procedures.[3] This order was the result of a lawsuit originally filed in 1970 by the NAACP Legal Defense and Educational Fund, Inc., alleging OCR's failure to enforce Title VI against 17 Southern and border states which operated racially segregated higher education institutions.

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[1] *Civil Rights Enforcement in the Department of Education, Hearing Before the Subcomm. on Civil and Constitutional Rights, Comm. on the Judiciary*, 97th Cong., 2d Sess., 13 (1982).

[2] Staff visited San Francisco-Region IX; Seattle-Region X; Atlanta-Region IV; Philadelphia-Region III; Dallas-Region VI; and Chicago-Region V.

B. MAJOR FINDINGS

1. A review of OCR's case processing statistics reveals that the agency has not vigorously enforced laws protecting the rights of women and minorities in education since 1981:

(a) Fifty-eight percent of complaint investigations closed between Fiscal Year (FY) 1983 and FY 1988 were concluded with a finding of "no violation" of civil rights statutes. During FYs 1981-1988, OCR initiated 9,768 complaint investigations, the majority of which related to handicap discrimination. Only 15 percent of the complaints involved race discrimination allegations, 17 percent related to gender discrimination and 3 percent, to national origin discrimination.

(b) While handicap- and sex-based complaint investigations were the most likely to be closed with a finding of "violation corrected," age and race-based complaint investigations were the most likely to be concluded with a finding of "no violation." Since the OCR was established as a result of the passage of the Civil Rights Act of 1964, which was originally intended to address the problem of race discrimination, the OCR's failure to devote adequate attention to race-based complaints constitutes a violation of its mandate. As the elderly population relies upon the national government to protect its rights as well, it is no less a travesty for the OCR to resolve age discrimination complaints with a finding of "no violation", if indeed the complaints filed were meritorious.

(c) The number of compliance reviews initiated between FY 1983 and FY 1988 appears generally to be in decline. The majority of reviews initiated addressed issues of handicap discrimination. Only 162 of the 1,378 reviews conducted during those years involved race discrimination issues, and 46 related to national origin discrimination. Two-hundred eighty-three reviews involved gender discrimination.

(d) Since 1981, OCR's policy has been to close most of its complaints and compliance reviews in which violations of the law have been found by means of a Letter of Findings (LOF) indicating that the violations cited have been corrected *even when the recipient school district has only promised that it will take action to correct the violations.* During FYs 1983-1988 (May 5, 1988), OCR closed 40 percent of all investigated complaints and 72 percent of all compliance reviews with a "violations corrected" LOF.

(e) During that same period, OCR closed 99 percent of its compliance reviews by either finding no violation or reaching a settlement prior to issuing a Letter of Findings.

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[3] *Adams v. Bennett,* Civil Action No. 3095-70 (D.D.C. December 29, 1977, *as modified by* order of January 17, 1985; *vacated,* December 11, 1987).

(f) If voluntary compliance cannot be secured, OCR may pursue enforcement through administrative fund termination proceedings or by referring the case to the Department of Justice. In FYs 1981–1988, however, OCR instituted only 40 administrative enforcement actions, 22 of which were instituted in 1984. Only 24 cases were referred to the Department of Justice for enforcement.

(g) On a positive note, the number of complaints missing at least one *Adams* time frame has declined on an annual basis since FY 1984. It is not clear, however, whether these data have been affected by the reported efforts of some regional offices to "backdate" the time spent in processing complaints, or whether these cases were closed with minimal, inadequate investigations in order to meet the time frames.

(h) Complaints closed because the complainant withdrew the complaints appear to have risen since FY 1982.

2. During the period FY 1982 through 1988, the Reagan Administration sought major budgetary and staff reductions for OCR, arguing that it could "do more with less." In 1982, $51 million were requested by the Administration. Since then, the agency's budget recommendations have significantly declined. By FY 1989, OCR's budget request was only $41 million.

3. Despite such budget cuts, OCR has failed to expend all of the monies allotted to it and has allowed between .4 percent and 6.1 percent of its annual appropriation to lapse to the U.S. Treasury.

4. The number of full-time-equivalent (FTE) OCR employees has drastically dropped in recent years, from 1,099 employees in FY 1981 to 820 in 1988. OCR has therefore, lost approximately 25 percent of its staff since 1981.

5. The Grove City v. Bell decision, handed down by the U.S. Supreme Court in March of 1984, had a devastating impact upon the OCR's enforcement effort. Numerous cases were cited by the regional office staff, in which complaints of discrimination could not be investigated because the OCR lacked jurisdiction over the program or activity receiving Federal financial assistance. In FYs 1984 through 1986, OCR closed in whole or in part 674 complaint investigations and 88 compliance reviews because of *Grove City's* limitations, and narrowed the scope of 72 compliance reviews. The *Grove City* decision has since been superceded by the Congress' override of the President's veto of the Civil Rights Restoration Act in March of 1988.

6. Exacerbating the effect of Grove City was the fact that the Department of Education had no reliable data on the actual allocation of Federal funds awarded by it to the recipient institutions. In most instances, OCR staff had to ask the school districts to inform them as to which programs or activities received the assistance. Staff received no guidance from headquarters regarding the available data for tracing the allocation of Federal funds. Consequently, the time required to trace the funding to the specific program or activity, and thereby, to establish jurisdiction, would often absorb 45 or more days, severely lessening the time remaining to investigate and resolve a complaint.

7. The case processing time frames ordered by the Federal district court in the Adams litigation were interpreted in a way which pro-

vided additional pressure upon the OCR staff to close cases without in-depth investigations and with possibly inadequate settlements. The Reagan Administration forced the OCR staff to establish jurisdiction, to investigate a case and to seek voluntary settlement within 105 days, instead of the 195 days prescribed by the court.

8. As a consequence of the narrowing of the time allotted to investigate a complaint or conduct a compliance review, OCR regional office staff indicated that the scope of issues for investigation is being narrowed.

9. Several OCR staff also admitted that they encouraged complainants to withdraw complaints in order to decrease the complaint load and to diminish the pressure to investigate and close cases within the Adams time frames. As an alternative, staff would urge complainants to "clarify" their allegations in order to narrow the scope of the complaints.

10. In one regional office, staff admitted that incoming complaints had been "logged in" on the following Monday in order to delay the time in which the Adams time frames began.

11. Letters of Findings which cite schools for violations of the civil rights acts must be first approved by the OCR National Office. Regional office staff consistently criticized the inordinate time taken by headquarters staff to approve the issuance of violation LOFs. OCR admitted that of the LOFs sent to headquarters for approval which had not been settled in the interim with "violation corrected" letters, all had been in headquarters for a period generally exceeding 180 days in order to "ensure that the Letters of Findings were fully supported by the evidence and accurately reflected current policy."

12. Of the 112 draft LOFs submitted to headquarters in 1987 through June 1988, only seven were approved. The vast majority (92) were resolved with a "violation corrected" LOF.

13. There was consensus among the OCR regional office staff that few useful, substantive policy directives have been issued since 1981. When policies have been handed down, they have been disseminated often in the form of responses to draft LOFs, "marginal notes", or telephone calls from the National Office. Rarely would there be policy directives disseminated nationwide and made applicable to all regions. A number of policy decisions have been circulated as drafts but have not been set forth as official policy. Moreover, staff indicated that when policy decisions are made, they are often superficial and of little value. As a result, it was difficult to analyze complex and unique cases because there was little in writing and no predictability as to headquarter's decision in such cases.

14. According to the OCR field staff, when legal decisions are submitted to the field offices, and are motivated by other than legal considerations, they are never reduced to writing, according to the OCR staff. This *ad hoc* policymaking cannot be challenged, however, because there is nothing in writing to evidence such a policy.

15. There was a clear perception among the regional office staff that certain issues were "off limits" and could not be investigated. Most of the issues involved race discrimination. Among such issues were; discrimination involving disciplinary actions and the placement of black students in special education programs. Reportedly, the National Office would not approve of the investigation of such cases unless there were "horror stories," facts of such egregiousness that a finding other than discrimination was not possible.

16. The National Office made it virtually impossible to find a violation of the civil rights laws because the standard of proof required to establish a violation was the stringent "intent" standard, which many regional office staff interviewed believed was not required by the courts.

17. While technical assistance (TA) has been the cornerstone of the OCR's enforcement effort since 1981, the regional office staff expressed reservations concerning the OCR's apparent use of TA as an alternative to compliance reviews and complaint investigations, and concerning OCR's failure to provide TA to beneficaries of the civil rights laws, in addition to the recipients of Federal financial assistance (i.e., the school districts/colleges).

18. Staff acknowledged that OCR has little presence in the communities in which it operates, and is particularly unknown to the surrounding minority populations. In one instance, Committee staff interviewed a member of the Seattle County Council regarding the well-publicized racial confrontations occurring within the local schools and found that this local community activist had no knowledge of OCR's existence.

19. OCR staff in a region with a large Hispanic population noted that none of the staff providing TA could speak Spanish and that there was little outreach to that community.

20. While monitoring of cases which have been closed with a "violations corrected" letter is essential to determining compliance, little substantive monitoring has actually taken place, particularly since the regional offices are not credited with conducting meaningful follow-up of such cases. As a consequence, the burden for determining if the school districts or universities are fulfilling their promises to comply with the law lies with the complainants who must notify the OCR of the recipients' inactivity.

21. Compared with its counterpart, the Office of Federal Contract Compliance Programs of the U.S. Department of Labor (OFCCP), the OCR has conducted relatively few compliance reviews since 1981. For example, in 1986, the OFCCP conducted approximately 5,000 compliance reviews while OCR conducted 250. It is not clear why there is such a wide variance between the enforcement statistics of the two agencies whose FTEs and budgets are comparable. The numerous layers of review of work product at the OCR and the voluminous investigative reports which must be prepared in each case may contribute to the relative paucity of compliance reviews at that agency.

22. The OCR has effectively discontinued its Quality Assurance Program, which it transferred to the regional offices in 1985. As a consequence, the agency has little information on which to determine consistency of policy application and quality of investigation.

23. Formalized training at OCR was virtually disbanded in 1982 when the Denver Training Center was closed. Staff expressed a clear and undeviating concern for the lack of classroom training, orientation programs for new employees, and refresher courses for more experienced investigators and lawyers.

24. The OCR's computerized data management system was rife with problems, making it difficult for Committee staff to fully ana-

lyze key aspects of the agency's performance. Moreover, because of the inadequacies of the data gathered during the pre-1983 period, staff could not conduct proper trend analyses. More seriously, the computerized system to track cases referred to headquarters for enforcement is so unreliable that agency officials advised Committee staff not to use it. Also, data concerning monitoring reviews is not systematically gathered or maintained by headquarters.

C. CONCLUSIONS

Since 1981, the Office for Civil Rights of the Department of Education has been stymied by an administration which actively opposed the laws which were entrusted to it and took efforts to minimize the agency's potential impact. As a consequence, the OCR has been beset with confused policy directives, administrative mismanagement, numerous changes in leadership, and severe reductions in resources. To the extent that any enforcement has occurred, it has occurred in spite of OCR's leadership, by a regional staff that remained loyal to the objectives implicit in the civil rights statutes which the staff were mandated to protect.

While the *Adams* lawsuit underscores the fact that OCR's failure to aggressively enforce the civil rights laws extends backwards to its inception in the Department of Health, Education and Welfare, it appears that the Reagan Administration severely worsened this agency's enforcement record, despite close monitoring by the Federal courts and the Congress.

Whether the OCR accepts its responsibility and begins to execute the laws as originally intended will depend greatly upon the commitment of the incoming Administration to civil rights enforcement. If the Judiciary relinquishes its role in monitoring this agency, the actions of the Congress in its oversight and legislative functions will be critical to both the agency's future and to the women and minorities who are the ultimate beneficiaries.

D. RECOMMENDATIONS

In view of the findings made in this report, the Committee staff makes the following recommendations:

1. The OCR should conduct compliance reviews of systemic discrimination issues, issues not raised in complaints, and issues that will have broad impact. Moreover, in keeping with its original mandate, OCR should conduct more compliance reviews regarding race and national origin issues, without diminishing its emphases in other areas.
2. The agency should review its work product requirements and multiple layers of approval of work so that the OCR may more efficiently and effectively increase its compliance review work load and conduct complaint investigations *without compromising quality.*
3. The Department of Education should establish a centralized, comprehensive and uniform computerized recordkeeping system of all Federal funds awarded by the Department to educational institutions.
4. OCR should establish time frames for case processing and publish them in the *Federal Register* for notice and comment. Ample

flexibility should be included in the time frames for the regional staff to investigate systemic, complex, novel or multi-issue cases.

5. OCR should require that time frames for case processing be based upon business days and not calendar days.

6. "Violations Corrected" Letters of Findings (LOFs) should be discontinued.

7. Notwithstanding OCR's mandate to achieve voluntary compliance, regional office staff must be permitted to issue violation LOFs without the complusion to settle a complaint or resolve a compliance review when there is little likelihood of settlement or when a violation LOF will either hasten the negotiation process or precede enforcement action.

8. Policy directives must be distributed on a timely basis and must be made available to all of the regional office staff and to recipients and the public at large. Such policies must be consistent with current law.

9. Technical assistance must not be used as a substitute for complaint investigations and compliance reviews and should be provided to both recipients and beneficiaries. Staff providing TA should not also be responsible for enforcement.

10. Monitoring must be considered an essential part of OCR's enforcement effort. Staff must be given adequate time to perform monitoring activities.

11. The Quality Assurance Program must be returned to the OCR National Office and restored to its previous function of assessing the quality of staff investigations and assuring consistency of policy implementation.

12. State higher education systems which were formerly *de jure* segregated systems must not be evaluated by a "good faith" standard, but must be held responsible for totally eliminating the vestiges of discrimination, "root and branch."

13. Formalized training courses, including those provided at the Denver Training Center which was closed in 1982, should be reinstituted.

14. The OCR staff should be restored to its 1981 levels as quickly as possible, and computer and other equipment needs should be communicated to the Congress in time for consideration of the agency's 1990 appropriation.

15. The OCR should consider amending the Title VI regulations to provide for specific time frames for records retention; full relief for victims of discrimination; a requirement which mandates that recipients of Federal financial assistance post notices in conspicuous areas that nondiscrimination is the law; authority for the issuance of subpoenas for the compulsion of necessary data; and a "reasonable cause standard" on which to determine compliance.

16. The OCR should conduct a detailed analysis of its data needs and capabilities for data gathering and monitoring. It should also assess the adequacy of its computer system, particularly regarding the communication linkages between the regional offices and headquarters.

17. The Education and Labor Committee should consider requesting a General Accounting Office audit of the issues raised in this report, particularly regarding policy dissemination and implementation.

18. The OCR should issue age discrimination regulations by the end of Fiscal Year 1989.

II. INTRODUCTION

A. LEGISLATIVE MANDATE OF OCR

The Office for Civil Rights of the U.S. Department of Education was established within the newly created Department by P.L. 96-88 which was enacted October 17, 1979.[4] The enabling legislation reads as follows:

SEC. 203. (a) There shall be in the Department an Office for Civil Rights, to be administered by the Assistant Secretary for Civil Rights appointed under section 202(b). Notwithstanding the provisions of section 412 of this Act, the Secretary shall delegate to the Assistant Secretary for Civil Rights all functions, other than administrative and support functions, transferred to the Secretary under section 301(a)(3).

(b)(1) The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made.

(2) Notwithstanding any other provision of law, the report required by paragraph (1) shall be transmitted to the Secretary, the President, and the Congress by the Assistant Secretary for Civil Rights without further clearance or approval. The Assistant Secretary shall provide copies of the report required by paragraph (1) to the Secretary sufficiently in advance of its submission to the President and the Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the report.

(c) In addition to the authority otherwise provided under this section, the Assistant Secretary for Civil Rights, in carrying out the provisions of this section is authorized—

(1) to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights;

(2) to select, appoint, and employ such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office, subject to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(3) to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private organizations and persons, and to make such payments as may be necessary to carry out the compliance and enforcement functions of such Office; and

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[4] The Department of Education Act, P.L. 96-88, 93 Stat. 673, 20 U.S.C. 3411, 3413 (1979).

(4) notwithstanding any other provision of this Act, to obtain services as authorized by section 3109 of title 5, United States Code, at a rate not to exceed the equivalent daily rate payable for grade GS-18 of the General Schedule under section 5332 of such title.[5]

B. The Committee's Oversight Authority

Rule X, Clause (2) of the Rules for the House of Representatives requires that each standing Committee review and study, on a continuing basis, the application, administration, execution and effectiveness of the laws within its jurisdiction, and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress, and whether such programs should be continued, curtailed or eliminated.[6]

C. Purpose of On-site Visits; Blueprint for 1989

During the first session of the 100th Congress, the Chairman of the Committee on Education and Labor instructed a Committee staff task force to explore the degree to which the Office for Civil Rights (OCR) of the Department of Education was enforcing the civil rights laws within its jurisdiction. The principal purpose of the investigation was to conduct an in-depth analysis and oversight of the civil rights enforcement activities of the agency. The second reason for the investigation was to develop a "blueprint for action"—a set of recommendations for the next Administration to consider worthy of implementation.

D. Methodology

The investigative team included Minority (Republican) staff throughout the study. Activities included: meetings with the OCR headquarters personnel; site visits to six of the ten OCR regional offices (San Francisco—Region IX, Seattle—Region X, Philadelphia—Region III, Chicago—Region V, Atlanta—Region IV, Dallas—Region VI); and requests for data from OCR headquarters, with the Congressional Research Service serving as consultant on the analysis of such data.

In order to achieve consistency in data requested during the onsite review, Committee staff covered issues which included but were not limited to: the time frames imposed upon OCR by the U.S. District Court for the District of Columbia in *Adams* v. *Bennett*;[7] the agency's implementation of the U.S. Supreme Court's decision in *Grove City College* v. *Bell*;[8] the use of Letters of Finding, particularly in cases in which a violation of the civil rights laws is found; monitoring of agreements once a settlement is obtained between the OCR and the school district/university; the agency's policy and practices regarding technical assistance; its Quality Assurance program; and the development and dissemination of policy guidance.

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[5] P.L. 96-88, 93 Stat. at 673.

[6] Rules of the U.S. House of Representatives, 100th Congress, 1st sess., at 3-4.

[7] Civil Action No. 3095-70 (D.D.C. Dec. 29, 1977), *as modified* Jan. 17, 1985; *vacated*, Dec. 11, 1987.

[8] 465 U.S. 555 (1984).

In each of the regions, the review team met both with management and non-management staff for a period of two days. Attendance by regional staff at these interviews was voluntary; each individual was asked to present his or her views on each topic of interest. Confidentiality of views was promised by Committee staff. Finally, the regional staff were invited to communicate directly with Committee staff once the site visit was over in the event that additional information pertinent to the review needed to be included in the final report.

In the interest of protecting the identities of the staff who provided information to the Committee during the course of this investigation, this report will not contain specific references to regional offices, nor will it identify the persons who supplied the data.

It is the view of Committee staff that this report accurately reflects the majority opinions of the OCR staff interviewed.

E. ACKNOWLEDGMENTS

The Committee staff wishes to acknowledge the cooperation of all of the individuals who made it possible to produce this report. In particular, the cooperation of the OCR regional office personnel, many of whom have maintained their commitment to these issues in the face of policy reversals, staff cutbacks and resource reductions, is to be highly commended. Committee staff also wishes to acknowledge the OCR headquarters staff for their assistance. Lastly, Committee staff would like to thank the Congressional Research Service staff for their consultative and analytical services which were instrumental in the production of this report.

III. HISTORY OF THE OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

A. OCR STATUTORY AUTHORITY AND ENFORCEMENT SCHEME

The Department of Education's Office for Civil Rights (OCR) is responsible for enforcing Federal laws which prohibit discrimination based on race, sex, national origin, handicap or age in all education programs or activities funded by the Federal Government. The OCR's authority is derived from the following statutes: Title VI of the Civil Rights Act of 1964,[9] which prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving Federal financial assistance (Title VI); Title IX of the Education Amendments of 1972,[10] which prohibits discrimination on the basis of sex in education programs or activities receiving Federal financial assistance (Title IX); Section 504 of the Rehabilitation Act of 1973,[11] which prohibits discrimination on the basis of handicap in Federally funded activities (Section 504); and the Age Discrimination Act of 1975.[12]

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[9] 42 U.S.C. Secs. 2000d-2000d-6.

[10] 20 U.S.C. Secs. 1681-1686.

[11] 29 U.S.C. sec. 794.

OCR also assists the Department of Education in implementing the civil right provisions of other education statutes, including the Education of the Handicapped Act, as amended,[13] the Carl D. Perkins Vocational Education Act,[14] and Title VII of the Education for Economic Security Act [15] (the Magnet Schools Assistance Program (MSAP)).

OCR enforces the above statutes by conducting investigations of complaints filed in its ten regional offices or in its national headquarters office in Washington, D.C., or by conducting compliance reviews. Until December 1987, OCR was required to investigate all complaints which fell within its jurisdiction and to conduct agency-initiated compliance reviews, except those alleging discrimination solely on the basis of age, according to specific time frames and procedures set forth in an order of Judge John H. Pratt, U.S. District Court for the District of Columbia, in the case of *Adams.* v. *Bennett* (Adams). [16] *Adams* is a continuation of the case originally brought under the name of *Adams* v. *Richardson* in 1970 against the Department of Health, Education and Welfare (HEW), Office for Civil Rights (OCR), for failure to enforce Title VI.

While the *Adams* court vacated its longstanding order imposing case processing and other requirements upon the OCR in December, 1987, Assistant Secretary Daniels indicated in a memorandum to regional staff that all procedures and time frames mandated by *Adams* would remain in effect until OCR reassesses the case processing procedures imposed by the court.[17]

Compliance reviews are internally generated and are intended to constitute broad investigations of overall compliance by recipients of Federal financial assistance from the Department of Education.[18] The institutions targeted for the reviews are selected by examining information gathered in surveys conducted by OCR and from other sources. The surveys are intended to assist the agency in selecting potential areas of systemic discrimination.

In FYs 1983-1988 (through 5/6/88), OCR conducted 1,378 compliance reviews and closed 1,379, some of which were initiated in previous years. The majority of the reviews initiated addressed issues of handicap discrimination. Only 162 cases involved race discrimination and 46, national origin discrimination. Two-hundred eighty-three cases involved gender discrimination. Appendix A sets forth the number of reviews conducted in FYs 1983-1988.

OCR's primary activity is the investigation and resolution of complaints. During Fiscal Years 1981-1988, OCR investigated 9,768 complaints. As of May 6, 1988, the majority of complaints investigated related to handicap discrimination. Only 15 percent of the complaints involved race discrimination allegations, 17 percent related to gender, and 3 percent involved national origin discrimination.[19]

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[12] 42 U.S.C. sec. 6101-6106.

[13] 20 U.S.C. secs. 1400-1461.

[14] 20 U.S.C. secs. 2301-2461.

[15] 20 U.S.C. secs. 1603.

[16] Civil Action No. 3095-70 (D.D.C. December 29, 1977, *as modified* January 17, 1985; *vacated*, December 11, 1987).

[17] Memorandum to Regional Civil Rights Directors from LeGree S. Daniels, Assistant Secretary for Civil Rights, [regarding] Dismissal of *Adams* Lawsuit (Dec. 15, 1987).

[18] *See* 34 C.F.R. sec. 100.7 (1987).

Upon a finding of an apparent violation of the applicable civil rights laws, OCR notifies the fund recipient and then must seek voluntary compliance.[20] Since 1981, OCR's policy has been to close most of its complaints and compliance reviews in which violations of the law have been found by means of a settlement which culminates in a "violations corrected" Letter of Findings (LOF), including a commitment by the recipient institution to take action to remedy the identified violation.[21] During FYs 1983-1988 (5/5/88), OCR closed 40% of all investigated complaints and 72% of all compliance reviews with a pre-LOF settlement or a "violations corected" finding.[22]

If voluntary compliance cannot be secured, OCR may pursue enforcement through fund termination proceedings within the agency or seek compliance through other means under law.[23] The administrative fund termination process entails issuing a notice of opportunity for a hearing and bringing the case of the recalcitrant institution before an administrative law judge within the Department of Education. The second method of enforcement involves the referral of the case to the Department of Justice with a recommendation of appropriate legal action.

Neither avenue of redress has been used with any regularity by the OCR in recent years. As Appendix A indicates, in Fiscal Years 1981-1988 (May 6, 1988) OCR instituted only 40 administrative enforcement actions, 22 of which were commenced in 1984 pursuant to deadlines established by the federal district court in *Adams*. Only 24 cases were referred to the Department of Justice (DOJ) for enforcement.

Most violations are settled voluntarily at one of four stages of the investigative process: early complaint resolution (ECR), Pre-Letter of Finding (LOF) negotiations, which permit the case to be settled voluntarily prior to the issuance of investigative findings; voluntary settlement after the finding of discrimination is made and the LOF is issued; and administrative enforcement, during which the institution is given the final opportunity to correct the violation.

The ECR is a process in which the agency acts as a mediator between an individual complainant and a recipient to negotiate a settlement between them. Upon successful mediation, the OCR closes the complaint without an investigation. If there is no agreement between the parties, the OCR investigates the complaint.[24] During FY 1987, ECR was offered in 221 complaints; attempted and completed in 122 complaints; and of the 122, OCR resolved 70% through mediation.[25]

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[19] *See* Appendix A.

[20] 34 C.F.R. sec. 100.7 (1987).

[21] OCR, Seventh Annual Report, FY 1987, at iii.

[22] *See* Appendix A.

[23] 34 C.F.R. sec. 100.8 (1987).

[24] Office for Civil Rights, Final Operating Plan for Fiscal Year 1988, 52 Fed. Reg. 29, at 47444 (Dec. 14, 1987).

[25] *Id.*

The ECR process has been severely criticized as being inconsistent with OCR's legislative mandate. In 1985, both the Department of Justice and former OCR officials expressed their strong opposition to ECR as legally insufficient and, therefore, contrary to OCR's enforcement mandate. The Department of Justice reportedly wrote:

> The apparent willingness of OCR to accept any agreement which results in a withdrawn complaint regardless of the substance of that agreement could lead to a weakening of your enforcement posture in our litigation position when dealing with a different recipient in a similar factual situation.[26]

The agency also monitors the implementation of statewide higher education desegregation plans, developed in response to OCR's investigation of the public higher education systems in states that had previously operated racially dual systems of higher education.[27] OCR also evaluates state vocational education Methods of Administration (MOA) programs for compliance with its 1979 Vocational Education Guidelines. OCR offers technical assistance or conducts compliance reviews to resolve MOA-related compliance programs.[28]

Technical assistance (TA) has become a major aspect of OCR's enforcement program. OCR provides TA to recipients of ED funds, beneficiaries, and state and local government officials to facilitate voluntary compliance with rights laws. Technical assistance may be provided in the course of OCR's compliance activities to assist in achieving voluntary corrective action. TA may also be provided at any time after the initiation of a compliance review or complaint investigation or following its conclusion, either in response to a request for assistance by a recipient or by an offer of assistance from the OCR staff. As a result, the agency argues, "compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while ensuring that the rights of the beneficiaries are protected."[29]

In order to enhance the effectiveness of the agency's operations, the OCR reportedly maintains a regional quality assurance program which consists of both quality control and case assessment with uniform standards to be used by the regions to evaluate their case activities.[30]

The OCR's statutory jurisdiction covers a wide range of recipients of Federal funds, including 50 state education and rehabilitation agencies, and their subrecipients; the education and rehabilitation agencies of the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone and the territories and possessions of the United States; approximately 15,000 school districts; approximately 7,500 postsecondary institutions including proprietary schools; and other institutions, such as libraries and museums that receive Federal financial assistance from the Department of Education.[31] Over 11 million minority group members, 3.5 million handicapped persons, and 21 million women are protected by the statutes enforced by OCR.[32]

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[26] *Investigation of Civil Rights Enforcement by the Department of Education, Hearings Before a Subcomm. of the Comm. on Government Operations*, 99th Cong., 1st Sess., (1985), at 146.

[27] See discussion of the OCR's activities regarding the higher education desegregation plans at sec. IV A. 8 *infra*.

[28] OCR Seventh Annual Report, *supra* note, 21 at iv.

[29] OCR, Final Annual Operating Plan for Fiscal year 1988, *supra* note 24.

[30] *Id.* at 47445.

The agency acts in cooperation with Federal agencies in the enforcement of the civil rights laws, particularly the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), and the Federal Mediation and Conciliation Service (FMCS). Under Executive Order 11,250, the DOJ has responsibility for coordinating Federal agencies' enforcement of Title VI, Title IX, Section 504, and other Federal laws that prohibit discrimination on the basis of race, color, national origin, sex, handicap, or religion.

The EEOC has primary coordination authority over complaints of employment discrimination under Executive Order 12,067. OCR refers to EEOC all Title VI and Title IX complaints alleging discrimination solely in employment that are not systemic or class based in nature. Under certain "special circumstances," OCR may retain jurisdiction in a case that might otherwise be referred to the EEOC. Individual complaints of employment discrimination based on age are referred to the EEOC because the OCR has no statutory jurisdiction over employment discrimination cases brought under the Age Discrimination Act.

OCR and the FCMS share the authority for processing age discrimination complaints that are not employment related. OCR screens age discrimination complaints to determine if it has jurisdiction. If jurisdiction is established, the complaint is sent to the FMCS for voluntary resolution. If the FMCS is unsuccessful, OCR investigates the complaint.[33]

The OCR works with the ED's Office of Special Education and Rehabilitative Services, the Office of Vocational and Adult Education, and the Office of Elementary and Secondary Education to coordinate the enforcement of the provisions of the Education of the Handicapped Act, the Carl D. Perkins Vocational Education Act, and Title VII of the Education for Economic Security Act (the Magnet Schools Assistance Program.)[34]

B. THE *ADAMS* ORDER

As stated above, the *Adams* v. *Bennett* case, originally captioned *Adams* v. *Richardson*, was filed in 1970 by the NAACP Legal Defense and Educational Fund, Inc., alleging that OCR failed to enforce Title VI in 17 Southern and border states. The *Adams* plaintiffs, students attending public schools, their parents, and others, alleged that the former Department of Health, Education and Welfare (HEW)/OCR refused to initiate enforcement proceedings against a number of state systems of higher education, state-operated vocational and special-purpose schools, and local school districts found in actual or presumptive violation of Title VI in seventeen southern and border states.

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[31] OCR Seventh Annual Report (1987), *supra* note 21 at 1-2.
[32] *Id.* at 1.
[33] *Id.* at 3.
[34] *Id.*

The plaintiffs specifically alleged that, in 1969 and 1970, HEW had found the state systems of higher education in Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania and Virginia to be unlawfully segregated but had failed either to obtain voluntary compliance through negotiations or to commence enforcement proceedings. On the elementary and secondary school levels, plaintiffs alleged, among other things, that HEW had initiated administrative enforcement proceedings against only seven out of 74 school districts which it had found to be out of compliance with Title VI. HEW argued that it had not instituted administrative action because it was continuing to seek voluntary compliance through negotiation and conciliation.[35]

In a 1972 Memorandum Opinion, the district court held that, where a substantial period of time had elapsed without achieving voluntary compliance, HEW's limited enforcement discretion was ended and it had to take action to terminate funds in accordance with its regulations or by any other means authorized by law, including referring the cases to the Justice Department.[36]

In February 1973, the court issued an order granting declaratory and injunctive relief requiring HEW, within certain time periods, to begin enforcement proceedings against various school districts (including vocational and other schools administered by state departments of education) and state systems of higher education found in actual or presumptive violation of Title VI; to implement enforcement programs to secure Title VI compliance; and to monitor school districts under judicial desegregation orders to determine if there is compliance with the orders and to inform such courts of their findings.[37] The U.S. Court of Appeals for the District of Columbia affirmed the district court's order, with modifications.[38]

In 1974, the Women's Equity Action League (WEAL) filed suit against HEW and the Department of Labor, alleging that HEW and Labor were failing to enforce Title IX and Executive Order 11,246, *as amended.* Executive Order 11,246 is a presidential directive barring Federal contractors from discriminating on the basis of race, religion, sex, color and national origin, and requiring affirmative action where there is an underutilization of members of a protected group.[39] Prior to 1978, eleven Federal agencies had the principal responsibility for enforcing the Order. In 1978, the contract compliance functions of the Federal Government were consolidated in the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration. The Secretary of Labor was directed to enforce the Executive order.[40]

In March 1975, the district court entered its First Supplemental Order which imposed substantial requirements upon HEW in addition to those included in the 1973 order.[41] In so ordering, the court found that while substantial progress had been made, there appeared to be "an over-reliance by HEW on the use of voluntary negotiations over protracted time periods. . . ."[42] Another group of public school students filed a third suit against HEW in 1975, alleging that it was failing to enforce Title VI in thirty-three northern and western states. In 1976, Judge Sirica held that HEW had failed to fulfill its statutory responsibilities in those states and imposed time frames within which HEW was to complete investigations and commence enforcement proceedings.[43] The plaintiffs in *WEAL* litigation and a group of Mexican-American students attending public schools were permitted to intervene in the *Adams* suit.[44]

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[35] *Adams* v. *Richardson*, 351 F. Supp. 636, 638 (D.D.C. 1973).

[36] *Id.* at 641.

[37] *Adams* v. *Richardson*, 356 F. Supp. 92 (D.D.C. 1973).

[38] *Adams* v. *Richardson*, 480 F.2d 1159 (D.C. 1973).

[39] 30 Fed. Reg. 12,319, *as amended by* Exec. Order 11,375 (1967) and 12,086 (1978).

[40] Executive Order 12,086, 43 Fed. Reg. 46,501 (1978).

[41] *Adams* v. *Weinberger*, 391 F. Supp. 269 (D.D.C. 1975).

In June 1976, the district court approved a consent decree which expanded its supervision of HEW's civil rights enforcement, and issued separate provisions for the processing of Title VI and Title IX complaints, compliance reviews and Emergency School Aid Act (ESAA) cases. The order also required HEW to publish annual operating plans, and to survey school districts to determine where compliance reviews should be conducted. The court also created procedures for reporting to the court and plaintiffs on enforcement activities.[45]

In 1977, the district court ruled, among other things, that six of the ten higher education desegregation plans which HEW approved in 1974 were inadequate and required the agency to devise criteria for higher education desegregation plans which would take into account the unique importance of black colleges.[46] Under the WEAL order, the district court also extended all of the administrative and reporting requirements imposed upon HEW to the OFCCP. Also in that year, the National Federation of the Blind intervened in *Adams*, arguing lack of enforcement of Section 504 (and Sec. 904 of the Education Amendments Act of 1972) and the parties entered into a consent decree (settlement) broadening the court order to cover HEW's enforcement in all fifty states, and extending its subject matter to complaints and compliance reviews under Section 504, Title VI, Title IX and Executive Order 11,246.

In October of 1977, the court also ruled that OCR had to expand its resources, concluding that it had not taken sufficient steps to obtain resources such as filling staff positions, which would facilitate compliance with the court's order of June 14, 1976.

While OCR's initial efforts to comply with the *Adams* time frames were successful, with the backlog of pre-1977 cases nearly eliminated, these accomplishments were of short duration. By 1981, there were 170 backlogged complaints, some of which had been pending for nine years.[47] Additional motions were therefore filed by plaintiffs in 1981-82 for failure to comply with the time frames for processing complaints and compliance reviews in the December 1977 order. In 1983, the court issued an order in support of the plaintiffs' complaint which contained expanded record-keeping requirements and required OCR to commence enforcement actions on pending cases in which violations of law had been found.[48]

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[42] *Id.* at 271.

[43] *Brown* v. *Weinberger*, 417 F. Supp. 1215 (D.D.C. 1976).

[44] *See Adams* v. *Mathews*, 536 F. 2d 417, 418 (D.D.C. Cir. 1976). The *WEAL* plaintiffs intervened only on the issue of resource allocation. The remaining allegations in that complaint continued to be addressed in the separate *WEAL* litigation.

[45] *Adams* v. *Mathews*, C.A. 3095-70 (D.D.C., June 14, 1976).

[46] *Adams* v. *Califano*, 430 F. Supp. 118, 121 (D.D.C. 1977).

[47] *Failure and Fraud in Civil Rights Enforcement by the Department of Education*, Comm. on Government Operations, U.S. House of Representatives, 100th Cong., 1st Sess. (1987), at 5.

Over the ten years preceding the *Adams* court's 1983 order, the court's requirements became more and more comprehensive, leading the civil rights agencies to complain that the court was encroaching upon their Executive Branch enforcement authority. On the other hand, it has been argued that *Adams* was singularly effective in promoting enforcement of the civil rights statutes within OCR's jurisdiction. Julius Chambers, Director of the NAACP Legal Defense and Educational Fund, testified that:

> In the early years (1964–1968) of Title VI, the real potential of losing federal money was enough to desegregate thousands of Southern schools. After the first *Adams* order in 1973, OCR began initiating administrative actions against Southern districts whose desegregation plans did not pass constitutional muster. After the 1983 *Adams* order set deadlines for securing compliance in pending cases, OCR took 23 cases to administrative law judges and referred 18 cases to the Department of Justice. That order generated more enforcement proceedings than had occurred in all of the previous decades.[49]

The end of the era of close judicial scrutiny of OCR was signaled in the mid-1980s when the Supreme Court decided *Allen* v. *Wright*, a case in which black parents challenged the tax-exempt status of segregated private schools in the South. The Court held that the parents lacked standing to bring the suit. It reasoned that citizens could not challenge the government's enforcement of a law unless they could demonstrate specific injury resulting from unlawful government action that is "fairly" traceable to the action challenged.[50] In December 1987, Judge Pratt read this ruling to lead to the conclusion that, as in *Allen*, the *Adams* plaintiffs lacked standing and that his previous orders intruded upon the functions of the Executive Branch and violated the separation of powers doctrine. He also found that the segregation of which plaintiffs complained was not the result of Federal inaction, but was caused by state and local practices and, therefore, could not be resolved by the relief which plaintiffs had sought.[51] The plaintiffs have appealed this decision.[52]

If the Pratt ruling is upheld by the appeals courts, it will mark the end of nearly two decades of oversight of the OCR by the Federal courts. More significantly, it may also signify the substantial curtailment of the courts' jurisdiction regarding oversight of the enforcement operations of all Executive Branch agencies, leaving the Legislative Branch to monitor the execution of the laws of the U.S. government.

The ruling also calls into question the current status of the OCR's enforcement policies and procedures. While the agency has indicated in internal memoranda that it will continue to adhere to the processing time frames imposed upon it by the courts,[53] if history is any indication, the agency will lapse into lethargy and will fail to carry out the mandate entrusted to it by the Congress.

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[48] *Adams* v. *Bell*, Civ. Action No. 3095-70, (D.D.C., March 11, 1983) (and *WEAL* v. *Bell*, Civ. Action No. 74-1720), *reprinted in Appendix K.*

[49] *Investigation of Civil Rights Enforcement by the Department of Education, Hearings Before a Subcomm. of the Comm. on Government Operations*, 99th Cong., 1st Sess. (1985), at 12.

[50] 468 U.S. 737, 757 (1984).

[51] *Adams v. Bennett*, C.A. No. 3095-70 (D.D.C., Dec. 11, 1987), at 35.

[52] *Adams v. Bennett*, appeal filed January 1988.

C. THE *GROVE CITY COLLEGE* v. *BELL* DECISION

Further complicating OCR's enforcement efforts was the U.S. Supreme Court's decision in *Grove City College* v. *Bell.*[54] *In Grove City,* the Court held that federal financial assistance in the form of student aid triggered coverage by Title IX. In determining the scope of the duty not to discriminate, however, a divided Court interpreted the statute's "program or activity" language narrowly. Since the only Federal funding obtained by Grove City College was in the form of student financial assistance, the Court held that only the financial aid office was covered by Title IX. The rest of the institution was permitted to escape coverage of this law and could therefore engage in gender-based discrimination with impunity. As the civil rights statutes pertaining to race, disability, and age discrimination utilized the same "program or activity" language, they were similarly interpreted to limit coverage to only the specific program or activity receiving the federal financial assistance and not to the entire institution.[55]

Thus, in addition, to having to process cases within strict time frames, the OCR was mandated by the *Grove City* decision to first determine whether the program or activity in which the discrimination allegedly emanated was a recipient of federal financial assistance. OCR staff uniformly stated that this was a lengthy process, greatly reducing the time remaining in which to investigate the merits of the discrimination complaint.[56]

The *Grove City* decision was overturned by the Congress in 1988 by the passage of the Civil Rights Restoration Act, which restated the intent of Congress that Title IX, Section 504, Title VI and the Age Discrimination Act were to be interpreted broadly, and that funding received by any part of an institution would trigger institution-wide coverage.[57]

D. ORGANIZATIONAL STRUCTURE AND BUDGET

The OCR is under the direction of the Assistant Secretary for Civil Rights, who reports to the Under Secretary and the Secretary of Education.[58] The Deputy Assistant Secretary (DAS) for Operations and the Deputy Assistant Secretary for Policy assist in carrying out the agency's functions. The DAS for Operations is responsible for, among other things, the coordination and direction of the Analysis and Data Collection Service and the Operations Support

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[53] Memorandum for Regional Civil Rights Directors from LeGree S. Daniels, *supra* note 17.

[54] 465 U.S. 555 (1984).

[55] *See, e.g., Consolidated Rail* v. *Darrone*, 465 U.S. 624, 635–636 (1984), in which the Supreme Court held that, as in Title IX, the phrase "program or activity" in Section 504 of the Rehabilitation Act of 1973 was to be interpreted to refer to the "specific program that receives Federal funds."

[56] See section IV.A.2 *infra,* for more discussion of the problems created by both the *Adams* time frames and the *Grove City* requirements.

[57] P.L. 100-259, sec. 6, 102 Stat. 28 (1988), *codified at* 42 U.S.C. sec. 2000d–4a. *See* S. Rep. No. 64, 100th Cong., 1st sess. 2 (1987), *reprinted in* 1988 U.S. Code Cong. & Admin. News 3,4 (1988).

[58] OCR, Mission and Function Statement, at 1 (undated).

Service.[59] The DAS for Policy is responsible for the direction and coordination of the Policy and Enforcement Service and the Regional Offices.[60] The Policy and Enforcement Service provides legal and policy support to the Assistant Secretary and the OCR. Among the duties of this office are the direction of policy development and policy-related research; the development of legal standards and guidelines for OCR's compliance and enforcement activities; and the provision of legal and policy guidance to the Regional offices and other OCR components. The PES also recommends cases for enforcement; directs the litigation of cases in administrative hearings; and processes appeals of regional determinations of compliance or noncompliance.[61]

OCR operates on a highly decentralized basis. Operational activities are performed primarily in the ten regional offices while headquarters provides legal, policy, operational and management support.[62] Each regional office is under the supervision of a Regional Director who reports directly to the Deputy Assistant Secretary for Policy. Larger OCR regional offices contain two divisions and staffs: the Elementary and Secondary Education Division; Postsecondary Education Division; Program Review and Management Support Staff (PRMS); and the Civil Rights Attorneys Staff. Smaller regional offices may have one division and two staffs: the Compliance Division; the Program Review and Management Support Staff; and the Civil Rights Attorneys Staff.[63]

As with the other Federal civil rights enforcement agencies, the OCR has experienced severe budgetary reductions since 1981. In that year, the OCR had a budget of $46.9 million.[64] Since then, this agency's budget has declined steadily. By FY 1988, OCR's budget was $40.5 million. In constant 1981 dollars, OCR's budget has fallen from $46.9 million in 1981 to $30.9 million in 1988. In constant dollars, OCR has therefore lost approximately 35% of its budget since 1981.

Similarly, the number of OCR full-time equivalent (FTE) staff has declined from 1,099 employees in FY 1981 to 820 (estimated) in FY 1988. OCR has therefore lost approximately 25 percent of its staff since FY 1981.[65]

Exacerbating this resource reduction is the fact that the OCR has returned unspent funds to the Treasury in each of the past seven fiscal years. In 1981, $1.1 million were returned; in 1985, $2.7 million were returned, and in 1987 $1.3 million were allowed to lapse. The percent of OCR's overall appropriation which was unspent ranged from 0.4% (estimated) in 1988 to 6.1% in 1984.[66]

OCR has suffered several changes in leadership since 1981 which have undoubtedly contributed to the inconsistency of its enforcement policies and confusion in and among its regional offices. Its first Assistant Secretary since 1981 was Clarence Thomas, who left

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[59] *Id.* at 2. See Appendix D for a reprint of this statement.
[60] *Id.* at 13.
[61] *Id.*
[62] OCR Annual Report, *supra* note 21, at 5.
[63] *See* OCR Organizational Chart, Appendix B.
[64] *See* Appendix A.
[65] *See* Appendix A.
[66] See Appendix A.

OCR in 1982 to Chair the Equal Employment Opportunity Commission. Thomas was succeeded by Harry Singleton, who served as Assistant Secretary from 1982 to 1985. Alicia Coro followed Singleton's controversial tenure in 1986 and served as Acting Assistant Secretary until July 1987, when LeGree Daniels was confirmed by the U.S. Senate.

E. Conclusions

In conclusion, the history of the Office for Civil Rights is a history of lethargy, defiance, and unwillingness to enforce the law according to its mandate. As a result, until recently the courts were obliged to take the unusual step of imposing strict requirements upon the agency to compel it to act according to the will of Congress. The history of this agency is further complicated by the severe narrowing of its jurisdiction by the Supreme Court and the eventual restoration of its mandate by the Congress. The OCR has been also hampered from fulfilling its mandate by severe reductions in staffing and budget since 1981, by numerous changes in leadership, and has contributed to its own problems by failing to expend all of the monies appropriated to it.

The following sections of this report will address the effects of three events as viewed by the OCR regional office staff: the *Adams* decisions, *Grove City* v. *Bell*, and the budgetary/staffing reductions. In addition, this report will discuss the impact of the Reagan Administration's policies on the enforcement efforts of the agency and will present conclusions and recommendations as to the future direction of the OCR in light of its history.

IV. FINDINGS

A. OCR Enforcement Policy Post-1981 and its Effects

1. INTRODUCTION

In a letter to Senator Paul Laxalt, former Secretary of Education Terrel Bell wrote:

> [T]he Federal courts may soon be after us for not enforcing civil rights laws and regulations. Your support for my efforts to decrease the undue harassment of schools and colleges would be appreciated. It seems that we have some laws that we should not have and my obligation to enforce them is against my own philsophy.[67]

This statement, written by the cabinet secretary responsible for enforcing the civil rights laws within OCR's jurisdiction, amply symbolizes the philosophy and enforcement policies of the OCR since 1981. Congressional hearings held in 1982, 1985 and 1987 substantiate this position. Moreover, reports written in 1985 and 1987 document the agency's continued failure to fulfill its mandate. Lastly, the Committee staff's findings contained in the following sections demonstrate that notwithstanding intense judicial and congressional scrutiny since 1981, OCR's leadership has relentlessly undermined the civil rights statutes entrusted to it.

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[67] *Civil Rights Enforcement in the Department of Education, Hearing Before the Subcomm. on Civil and Constitutional Rights, Comm. on the Judiciary*, 97th Cong., 2d Sess. (1982), at 13.

In 1982, witnesses testifying before the Subcommitee on Civil and Constitutional Rights of the House Judiciary Committee argued that OCR had failed to enforce the civil rights laws. More specifically, they alleged that OCR:

—gave regional offices excessive autonomy and failed to monitor the quality of the field work;
—accepted inferior work;
—implemented the Pre-Letter of Findings Policy, with which it would deem institutions to be in compliance with the law if they promised to take remedial actions;
—failed to monitor the recipients' compliance with their previous assurances and therefore shifted the burden of enforcement and monitoring to the discriminatees by failing to conduct adequate follow-up of cases;
—accepted inadequate remedial plans; and
—proposed regressive regulations implementing questionable policies.

In 1985, similar complaints were expressed at a hearing before the Subcommittee on Intergovernmental Relations of the House Government Operations Committee.[68] At that hearing, witnesses assailed the OCR for failing to comply with the *Adams* order and alleged that the agency had continued to implement the questionable enforcement policies identified in 1982. Moreover, witnesses alleged that OCR had failed to assume responsible leadership in its implementation of the *Grove City* v. *Bell* decision (and was therefore sued in Federal court for non-enforcement), and had dismantled key programs, such as the Quality Assurance Staff program in headquarters, ostensibly in order to silence criticism of its actions. Even the Department of Justice, whose civil rights policies were subjected to similar scrutiny, criticized the OCR for acceding to settlements of questionable legal basis, resulting in a weakening of its enforcement posture.[69]

In 1987, witnesses again came before the Congress and assailed the OCR's failure to comply with the *Adams* court's order.[70] More seriously, OCR was discovered to have engaged in actions to thwart the effect of the order and its mandated time frames for case processing by "backdating" civil rights documents. OCR was also criticized for failing to take action to force the desegregation of higher education institutions which had not removed the vestiges of illegal discrimination. Instead of requiring that such institutions achieve their earlier stated goals for desegregation, the OCR had unofficially implemented a good faith standard which effectively permitted the schools to escape their responsibility to redress past inequities.[71]

In the following section of this report, Committee staff will present additional evidence to demonstrate that OCR has continued to implement the questionable enforcement policies first intimated by former Secretary Bell and will offer recommendations for remedying the substantial problems imposed upon this agency in the past seven years.

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[68] *Hearings supra* note 49.

[69] See text accompanying note 26, *supra*.

[70] *Civil Rights Enforcement by the Department of Education, Hearing Before a Subcomm. of the Comm. on Government Operations*, 100th Cong., 1st Sess. (1987).

[71] *See also, Failure and Fraud in Civil Rights Enforcement by the Department of Education, Comm. On Government Operations*, 100th Cong., 1st Sess. (Oct. 2, 1987).

2. THE EFFECTS OF *GROVE CITY* AND *ADAMS* ON ENFORCEMENT

In *Grove City College* v. *Bell*, the Supreme Court found that Title IX's prohibition of sex discrimination at educational institutions receiving Federal financial assistance extended only to the specific program or activity receiving the funds, and not to the entire recipient institution or entity. Before *Grove City*, if any subdivision of an institution or organization received funds from the Federal government, the entire institution was prohibited from discriminating on the basis of race, national origin, disability, age, or sex.[72] Upon a finding of discrimination on the basis of race, national origin, sex, disability, or age—government action, or a court claim filed by an affected individual, could result in a loss of Federal funds. The *Grove City* decision substantially narrowed the scope of coverage of the civil rights statutes affected to the specific program or activity receiving Federal financial assistance.

Prompted by a lawsuit filed by the American Association of University Women and others, Harry M. Singleton, former Assistant Secretary for Civil Rights in OCR/ED released a memo July 31, 1984, to all OCR/ED Regional Directors regarding the limits of jurisdictional coverage in light of *Grove City*.[73] In describing OCR's application of *Grove City*, Singleton stated that:

> Although the facts of the case placed the *Grove City* holding in the context of Title IX, there is no doubt that the Court's decision is applicable to OCR's other statutory authorities which include the phrase "program or activity receiving Federal financial assistance". This is illustrated by a decision rendered on the same day as *Grove City*. In *Consolidated Rail Corporation* v. *Darrone*, 104 S. Ct. 1248, 1255 (1984), the Court expressly relied on *Grove City and North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982) to observe that "Section 504, by its terms, prohibits discrimination only by a 'program or activity receiving Federal financial assistance.' . . . Clearly, this language limits the ban on discrimination to the specific program that received federal funds". Moreover, the "program or activity" language in Title IX, Section 504, and the Age Discrimination Act was modeled after the language of Title VI. Therefore, the *Grove City* decision applies to the jurisdictional scope of Title VI, Section 504, and the Age Discrimination Act, as well as Title IX.[74]

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[72] Under Title IX, sex discrimination is prohibited only in educational institutions receiving federal financial assistance.

[73] *Association of University Women, et al.*, v. *U.S. Department of Education*, Civ. Action No. 84-1881, Complaint for Declaratory and Injunctive Relief (D.D.C., June 19, 1984).

[74] Memorandum to Regional Civil Rights Directors, Regions 1-4, From Harry M. Singleton, Assistant Secretary for Civil Rights, (regarding) Analysis of the Decision of *Grove City College* v. *Bell* and Initial Guidance on Its Application to OCR Enforcement Activities. (July 31, 1984).

Thus, Singleton extended the Supreme Court's narrow interpretation of Title IX to other civil rights statutes utilizing the same "program or activity" language.

In October 1985, the Department of Education's Civil Rights Reviewing Authority (CRRA) further addressed the question of program specificity under *Grove City* in the case of *In the Matter of Pickens County School District*, Docket No. 84-IX-11 (Oct. 28, 1985). It ruled that programs or activities receiving funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. sec. 3811 *et seq.*, (Chapter 2) are earmarked by the terms of the preexisting grant statutes, and OCR's jurisdiction is therefore limited by the purpose of the programs selected by the school district, not by the overall intent of Chapter 2.[75] Moreover, the CRRA held that since OCR failed to prove discrimination in any specific program receiving Chapter 2 funds, it lacked jurisdiction in this Title IX case.[76]

The OCR headquarters also found that, except in cases involving construction, reconstruction, and renovation of facilities, jurisdiction was limited to the period of the grant or loan.[77] Federal funding programs such as Student Assistance Financial Assistance (Impact Aid) and Title III(c) of the Higher Education Act provided institution-wide coverage.[78] The "admissions exception" to the program specific requirements of *Grove City* was interpreted to provide institution-wide coverage over admissions-related issues.[79]

Therefore, during the period between the Court's issuance of the *Grove City* decision in 1984 and the Congress' override of the President's veto of the Civil Rights Restoration Act in 1988, the OCR staff had to establish, as an initial matter, whether an educational institution received Federal financial assistance, and if so, which program or activity received such assistance. Unless an elementary/secondary school district received impact aid (aid to federally affected areas, i.e. areas which may contain Air Force bases or other federal facilities), which was interpreted to extend system-wide and was not program-specific, the OCR had to determine which particular school program received the funding.

On the higher education level, the program-specific funding requirement was strictly applied, according to the OCR staff. Thus, in order to establish jurisdiction over the Mathematics Department of a college or university, for example, OCR staff had to determine that the department received Federal financial assistance. Failure to identify the allocation of Federal financial assistance in the specific program or activity of an educational institution could result in OCR's closing a potential case because of a lack of jurisdiction.

The OCR staff was compelled to spend days, and often weeks, to determine whether a particular program or activity received Federal financial assistance. Some cases took 60 days to establish jurisdiction. After such an arduous search was made, the agency often found that it did not have jurisdiction over the case. If jurisdiction was found after so many days, the staff was still faced with having to investigate the discrimination charge within the remaining time allotted, resulting in a more superficial review and a strong likelihood of a "no violation" finding or an inadequate settlement.

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[75] *In the Matter of Pickens County School District and South Carolina Department of Education*, U.S. Department of Education, Civil Rights Reviewing Authority, No. 84-IX-11 (Oct. 28, 1985).

[76] *Id.* at 24.

[77] Memorandum of Alicia Coro, Acting Assistant Secretary for Civil Rights, to Regional Civil Rights Directors, [regarding] Revised Guidance for the Selection of Sites for Compliance Review, at 2 (July 14, 1987).

[78] *Id.*

[79] *Id.*

In discussing the impact of *Grove City* with OCR regional office personnel assigned to receive complaints of discrimination at the in-take processing level, Committee staff were told that:

—their most difficult responsibility was attempting to trace Federal funds when complaints were filed;

—tracing Federal funds could take 45–65 days or more, and quite often before jurisdiction could be established, the *Adams* time frames (requiring that complaints be processed within a certain period of time) could elapse;

—recipients of Federal funds were often asked to provide information on the Federal agency source of funds and to identify the local program which received these funds;

—in many instances, since OCR personnel had great difficulty in documenting the source within the Department of Education, and the program assignments of these funds, OCR personnel would have to accept the recipients' account which could be inaccurate. This created the anomalous situation of having the school district, which is the object of the investigation, inform the Federal agency regarding the use of the agency's funds, for the purposes of establishing jurisdiction;

—OCR headquarters provided very little comprehensive data or information on the Department of Education's total grant awards to recipients, by state, region, or local governmental units, or by institution or agency receiving such awards. Information, material or data that are available from headquarters are often not accurate or current, since ED does not know what happens to Federal grant awards, once these awards reach state and local levels;[80]

—higher education institutions generally volunteered very little information on the receipt and distribution of Federal awards within their institutions. Therefore, most complaints were closed because of the inability of OCR personnel to establish jurisdiction. Additionally, in order to evade coverage of the civil rights laws, schools threatened to take such actions as moving classes to other buildings not constructed with Federal loans or shifting the Federal assistance to a general fund which was not traceable to a particular program or activity;[81]

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[80] Staff indicated that they discovered by accident the Federal Assistance Awards Data System (FAADS), the Consolidated Assistant Secretary Post Secondary Education Retrieval System (CASPER), among others. Most of this documentation was not current, however, and the staff was compelled to contact the recipient to verify the accuracy and currency of the grant or loan received.

[81] *See, e.g.*:

—a Sec. 504 case brought by a dyslexic student against a major university in the Chicago area, which was closed because the regional office could not identify funds received by the School of Education;

—a sexual harassment case against a major midwestern university, which was closed because the institution would not disclose where its Federal assistance had been allocated; and

—a harassment and retaliation case against a major school for mental health, also closed because OCR could not determine whether the institution had received Federal financial assistance.

—title VI complaint investigations were severely hampered and restricted because of OCR's narrow interpretation of *Grove City*, resulting in an inordinate reduction in Title VI and Title IX case processing, and with a severe reduction of investigations into within-school-discrimination (student assignments); course assignments; programs; classes; ability grouping; tracking; discipline; counseling; student assignment to physical education classes). Schools, therefore, may have acted in a manner which allowed discriminatory behavior to occur and OCR nonenforcement may have led schools to believe that they did not have to observe anti-discrimination laws.

The *Grove City* decision also created some absurd results. For instance, the OCR was only able to assert jurisdiction because and if computers bought by Federal funds were used in *every* program in a school. On the other hand, if a teacher filing a discrimination complaint did not use the computer software purchased by Federal funds, and that was the only aspect of the program supported by Federal funds, the OCR would not have jurisdiction. In order to escape coverage by the civil rights statutes, the school district in Cobb County, Georgia returned its impact aid funds to the Department of Education.[62] Thus, students in that school district have been left with virtually no protection under the civil rights statutes.

In a case involving university housing/student services, the agency had to determine where the university's Committee on Appeals of Residences met and whether it met in a building constructed by Federal funds. In a student discipline case involving an arrest of a student that took place in the hall of the school, the OCR could not trace Federal funding to the hall of the school and could not, therefore, assert jurisdiction.

Not only did the *Grove City* decision adversely affect complaint investigations, it severely curtailed the agency's authority to conduct compliance reviews. In some cases, while the Department may have wished to review a school district in which there have been many allegations of discrimination, it could not conduct such a review because it did not have jurisdiction. Thus, Title VI cases involving employment discrimination, disparate grading, retention, or disciplinary practices, could not be investigated because the agency had to trace Federal funding to all of the programs throughout the school. Moreover, in employment discrimination cases, available remedies were reportedly limited to those persons whose salaries were funded by the Federal government.

In FYs 1984 through 1986, OCR closed in whole or in part 674 complaint investigations and 88 compliance reviews and narrowed the scope of 72 compliance reviews.[63]

Further complicating the task of having to trace funding were the *Adams* v. *Bennett* case processing time frames, as interpreted by the Department of Education, which require that all investigations (where there is a violation found) and attempts at conciliation and voluntary resolution must take place and Letters of Findings (LOFs) must be issued within 105 days after receipt of a complete complaint, and for compliance reviews, by the 90th day after commencement of the review. Only if efforts to achieve voluntary settlement fail are draft LOFs sent to headquarters for approval and issuance.

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[62] *See* letter of Cobb County, Georgia to the Department of Education, in Appendix L.

[63] Letter to Representative Don Edwards, Chairman, House Subcomm. on Civil and Constitutional Rights, from Alicia Coro, Acting Assistant Secretary for Civil Rights (March 31, 1987). *See also*, *Federal Funding of Discrimination: The Impact of Grove City College* v. *Bell*, National Women's Law Center, (undated).

The *Adams* court had ordered, among other things, the following time frames for investigations:

(a) Within 15 calendar days of receipt of a complaint, the Department of Education (ED) must issue a notification to the complainant as to the completeness of the complaint.

(b) If the complaint is complete, ED is to conduct a prompt investigation to determine whether a violation has occurred. This determination must be in writing within 105 days of receipt of the complete complaint.

(c) If a violation has occurred, ED must attempt to bring the affected institution into voluntary compliance through negotiations. If corrected action is not secured within 195 days of receipt of the completed complaint, ED must initiate formal proceedings or take any other means authorized by law no later than 225 days after receipt of the complete complaint.[84]

While the court did not preclude negotiations prior to the issuance of a Letter of Findings, it made clear that negotiations leading to settlement were not a necessary precedent of the issuance of a letter of findings. By requiring negotiations to take place prior to the issuance of the LOF within the first 90-day period, OCR effectively eliminated the second 90-day period in which negotiations were intended to take place. As a result, the agency severely increased the pressure upon enforcement staff to accept a settlement prior to issuing the letter of findings.

Regional staff explained that 90 days are insufficient to process a complaint—from establishing jurisdiction to determining whether there is (or is not) a violation, to negotiating a settlement. Moreover, staff argued that counting time frame days as calendar days instead of business days was unreasonable and placed undue pressure upon them.

There is some confusion at the staff level as to whether headquarters is required to adhere to the *Adams* time frames. If, for example, pre-Letter of Findings (LOF) settlement efforts are unsuccessful and either appropriate remedial action or an appropriate remedial action plan cannot be obtained, draft violation LOFs to the recipient and the complainant should be issued in time to meet the *Adams* time frames.[85] A non-compliance LOF, accompanied by the investigative file, must be reviewed by the Branch Chief, Division Director, Chief Regional Attorney and Regional Director, and is then sent to the Assistant Secretary for inclusion on the Enforcement Activities Report (EAR) before the 90-day (or 105-day) period.[86] If the time frame is passed while the LOF is in headquarters, it is not clear that the Washington, D.C. staff is held responsible for the delay. Notwithstanding the fact that the headquarters staff has caused the LOF to be kept in the National office after the 90-day period has passed, regional staff indicated that in this situation, headquarters holds the regional offices responsible and penalizes them in subsequent performance evaluations.

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[84] *Adams*, Order of March 11, 1983, at 9.

[85] U.S. Department of Education, Office for Civil Rights, *Investigation Procedures Manual*, March 1985, at 57.

[86] *Id.* at 59.

Field staff also noted that the scope of cases for investigation is also being narrowed due to the pressure to close cases within the 90-day time frame. For example, staff indicated that there have been discussions regarding eliminating issues involving special education students with limited English speaking proficiency (LEP) from both Section 504 and *Lau* [87] reviews, or in the alternative, to drop issues such as accessibility for handicapped persons, so that the staff will be able to meet the time frames. The result of such a decision will be that OCR will not determine whether school districts are placing LEP students into special education programs unjustifiably.

Staff also noted that until recently, few *Lau* compliance reviews were being scheduled because of the extensive nature of such reviews and the need to meet the *Adams* time frames. Remedies obtained as a result of such reviews have also been allegedly compromised by the pressure of the time frames.

Lastly, some staff suggested that there was a direct correlation between compliance with the *Adams* time frames and the number of cases closed with "no violations." Data submitted to the Committee by the OCR do not support this claim, however.

Several regional office staff also admitted to encouraging complainants to withdraw complaints in order to decrease the complaint load and to diminish the pressure to investigate and close cases within certain time frames. This is an issue which was raised by the National Women's Law Center in its testimony before the Subcommittee on Intergovernmental Relations in 1985.[88] At that hearing, the witness testified that complainants were urged by OCR staff to drop complaints:

> We have been told by several of our organizations that we represent in these lawsuits and even an individual plaintiff in one of these lawsuits, that they were called; they were urged to drop the complaint before it was investigated; they were urged that they were sure—the Office for Civil Rights was sure that the problems would be eliminated and that the best thing for the complainant is to simply drop it without any formal investigation, without any commitment on the part of the school that it would cease the discrimination practices which had been the subject of the complaint . . . We know of instances where the

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[87] *Lau* v. *Nichols*, 414 U.S. 563 (1974). In *Lau*, the Supreme Court held that San Francisco's failure to provide English language instruction to students of Chinese ancestry who spoke no English, or to provide them with other instructional procedures denied them a "meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations." 414 U.S. at 568. The Court cited the HEW guidelines, 35 Fed. Reg. 11,595, which provided that where inability to speak and understand the English language excludes national origin-minority group children from effective participation in an educational program of a school district, the school must take affirmative steps to rectify the language deficiency.

[88] *Hearings, supra* note 26.

> complainants had refused to drop the complaint, and we have been given reports where that complaint has been shown as having been dropped.[89]

Complaints closed because the complainant withdrew the complaint appear to have risen since FY 1982. As the data in Appendix A indicate, the percentage of total complaints handled that were withdrawn shows significant growth between FY 1986 and 1987. These data, alone, do not prove that OCR staff have initiated the complaint withdrawals, however.

In one region, Committee staff learned that incoming complaints were being "logged in" on the following Monday in order to delay the time in which the *Adams* time frames began and the investigation of the complaints was to be initiated.[90]

The number of complaints missing at least one *Adams* time frame has declined on an annual basis since FY 1984.[91] The percentage of total complaints handled that missed at least one time frame also declined annually between FY 1984 and FY 1987. The regional distribution of complaints missing at least one time frame shows regions III and IV with substantially more of such cases, and region VIII with substantially fewer. That is, the more complaints handled by a region, the more likely it is to miss time frames.

While the data showing that OCR offices are substantially improving their efforts to meet the *Adams* time frames are encouraging and the agency should be commended for this achievement, it is not clear to what extent the reported efforts by some regional offices to "backdate" the times in which cases have been processed have had an effect upon these statistics. Moreover, it is not clear that each of the cases included in these statistics has been investigated as fully as possible, in view of the pressures placed upon the staff by *Grove City* as well as *Adams*, as interpreted by OCR.

Moreover, some staff perceived that their performance evaluations emphasized adherence to the *Adams* time frames at the expense of quality work. There was a tremendous impetus to close cases over time, and therefore, to "cheat" the investigation and the remedy required. As a result, staff argued that remedial agreements are vaguely drafted, provide little substantive relief, and contain little detail.

In spite of the difficulty that *Adams* provides, most regional staff regard time frames *per se* as necessary and important. Some staff also suggested that headquarters restore the second 90-day tier of the time frames, which headquarters arbitrarily deleted.

In summary, *Grove City* had a major, devastating effect on the enforcement of Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, especially in the area of higher education. Reportedly, the majority of higher education cases were closed because the agency had no jurisdiction. Cases involving sex discrimination in athletics, disparate disciplinary practices, employment discrimination based on sex, race or national origin, and other forms of within-school discrimination were most affected by *Grove City* because of the difficulty presented in tracing funding to the particular program or activity affected. In some instances, cases were reportedly closed with a "no violation" finding because jurisdiction could not be established. Moreover, school districts, aware of the constraints under which the OCR must operate, may have often delayed providing the agency with the funding information until the *Adams* deadline had approached or had passed.

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[89] *Id.* at 72.

[90] Statement of responsible staff on file with Committee.

[91] See Appendix A, Table 9A.

The *Grove City* decision, reportedly, had less impact on Section 504 of the Rehabilitation Act of 1973, however, because the funding provided under P.L. 94-142, Education for All Handicapped Children Act, enabled OCR to establish jurisdiction in such cases.

Although the *Grove City* decision is no longer an issue because of the Congress' override of the President's veto of the Civil Rights Restoration Act in 1988, the Department of Education's failure to maintain documentation on the universe of grantees and loan recipients and the ultimate utilization of its awards requires immediate and ongoing attention. Committee staff therefore submit the following recommendations:

—that the Department of Education establish a centralized, comprehensive, and uniform computerized record-keeping system regarding the distribution of Federal funds awarded to education institutions by the Department of Education, and the allocation of such funds within those specific institutions; and

—that the Department of Education monitor the expenditure of the funds that it disburses and maintain current information on the utilization of such funds.

The time frames which were established under *Adams* v. *Bennett* to compel the expeditious processing of cases have been interpreted in a way that has had a severe and deleterious impact upon the enforcement of the civil rights statutes under OCR's jurisdiction. Forcing the regional office staff to establish jurisdiction, investigate a case, and to attempt to negotiate an adequate remedy before the letter of finding is issued—all within 90 days—apparently has had the effect of undercutting the OCR staff's ability to perform quality investigations and to obtain the remedies required to remove the effects of discrimination. Moreover, staff have been deterred from investigating cases raising novel or complex issues and have been compelled to redefine or "clarify" complaints in order to narrow their scope. Even worse, a few staff have admitted to "encouraging" complainants to withdraw their complaints in order to reduce the case load. Such actions are reprehensible and are clearly contrary to the intent of Congress when it enacted the civil rights statutes within the OCR's jurisdiction.

Committee staff recommends that the OCR seriously consider implementing the following recommendations:

—that the OCR publish any proposed revisions of the *Adams* time frames in the *Federal Register* for notice and comment;

—that the calculation of days for the processing of cases be based upon business days and not calendar days;

—that *Adams* be used as a guideline with ample flexibility permitted to the regional offices for the adequate investigation of complex, novel or multi-issue cases;

—that exceptions, which are allowed under the *Adams* order, be utilized at the regional office level to account for unforeseen delays and complexities;

—that the time frame for complaint investigations begin once jurisdiction has been established (which is the current policy for compliance reviews;

—that complaints alleging discrimination against a class of persons and compliance reviews involving multiple issues or class-based discrimination be encouraged by extending the minimum time frame for the completion of such cases, with exceptions where needed and

—that the full 180 days contemplated in the *Adams* order be restored to allow for the full investigation and negotiation of a case.

The act of compelling hurried and, therefore, superficial investigations of discrimination at OCR closely resembles the problem identified by Committee staff when it conducted on-site investigations at the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor.[92] This matter cannot, therefore, be viewed as an isolated problem created by the *Adams* litigation, but appears to be the result of a more concerted effort to hamper the full investigation and remediation of civil rights violations. It is suggested that the subsequent Administration take immediate efforts to rescind all policies, written or oral, which have had the above-stated effects.

3. LETTERS OF FINDING (LOFS) FOR VIOLATIONS OF THE CIVIL RIGHTS LAWS

As noted above, under the *Adams* order, the OCR was required to process complaints of discrimination within certain strict time frames. The OCR has announced that, pending a review of the case processing time frames, this policy will remain in effect notwithstanding the outcome of the plaintiffs' appeal of Judge Pratt's December 1987 decision in *Adams*.[93] Once noncompliance is identified, negotiations must commence pursuant to the *Adams* order and OCR policy. Staff noted that if noncompliance has been established prior to the *Adams* due date, "the pressure is to close the case by the date and a finding of noncompliance interferes with that pressure." If the recipient is willing to remedy the case, staff stated that frequently OCR closes the case on a less complete remedy than that which would have been obtained in the past, because it is difficult to investigate and negotiate a case in 90 days, particularly in view of the requirement to establish jurisdiction pursuant to *Grove City*.

When negotiations fail, the OCR must issue a Letter of Findings (LOF) citing the school for a violation of the civil rights laws. All draft LOFs which contain a finding of discrimination must be placed on an Enforcement Activities Report (EAR) by the regional offices and approved in headquarters before being sent to the school districts/universities. (LOFs containing a finding of no violation or "violations corrected" may be issued from the region.)[94] Noncompliance LOFs are only resorted to if negotiations have failed and no other options exist. The *Adams* time frames continue to run while the draft LOF is in headquarters.

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[92] *See A Report on the Investigation of Civil Rights Enforcement by the Equal Employment Opportunity Commission*, House Comm, on Education and Labor, 99th Cong., 2d Sess. (1986); and *A Report on the Investigation of Civil Rights Enforcement Activities of the OFCCP*, U.S. Department of Labor, House Comm. on Education and Labor, 100th Cong., 1st Sess. (1987).

[93] Memorandum to Regional Civil Rights Directors from LeGree S. Daniels, Assistant Secretary for Civil Rights, (regarding) Dismissal of *Adams* Lawsuit (Dec. 15, 1987).

Staff consistently assailed the inordinate time taken by headquarters to review and approve an LOF. As a result, staff cited instances in which cases involving noncomplying school districts were closed instead of being sent to headquarters. This problem is exacerbated by the fact that some Regional Directors have been allegedly criticized by the National Office for having a number of draft LOFs in headquarters. The regions, therefore, have inferred from such treatment that the National Office does not wish for them to find violations of the law and, in some instances, have chosen to close cases instead of referring letters citing violations to Washington.

The Committee requested data relating to the number of draft LOFs submitted to headquarters by the regions, according to the year of submission, the region and the basis (*i.e.*, race, sex, etc.) since 1981. The Committee also inquired as to the disposition of all such drafts and the reason for delays in returning the letters to the regional offices.

In response, the agency provided a print-out of the data in the Headquarters Accountability Tracking System (HATS) from Fiscal Year 1981 through the present. Charts of the data collected manually by staff in FY 1987 and 1988 were also provided.

The OCR noted that the data included in the computer print-out of the draft LOFs in headquarters were unreliable because the system utilized was not updated regularly. Only the 1987-1988 data which were manually compiled were usable. Thus, the Committee was unable to establish whether and how long cases languished in headquarters. Neither could it be determined whether the delays in handling the documents were due to national office inertia, policy differences or other reasons. Only a case-by-case analysis would yield such a result.

The OCR admitted, however, that of the 10 LOFs sent to headquarters for approval in 1987-1988, which had not been settled in the interim with "violation corrected" letters, all had been in headquarters for a period generally exceeding 180 days in order "to ensure that the Letters of Findings were fully supported by the evidence and accurately reflected current policy." The agency did not indicate when those documents had been referred to headquarters and how long they had been maintained there.[95]

Regional office staff cited several instances in which cases alleging discrimination in retaliation or discipline languished in the Washington office for months or sometime years without response or action. For example, in a discipline case, the regional office submitted a draft LOF to headquarters. It was finally returned for enforcement several years later. Field staff felt that the delay in returning the LOF was due to the then Secretary's disapproval of discipline cases.[96]

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[94] *See, e.g.*, Memorandum to OCR Senior Staff from Harry M. Singleton, Assistant Secretary for Civil Rights (regarding) Changes in Procedures for Release of LOFs and for Reporting ECR and Pre-LOF Negotiation, 3-4 (Jan. 18, 1983).

[95] Appendix A.

In a case involving handicap discrimination, a draft noncompliance LOF was submitted to headquarters. Allegedly because headquarters staff agreed with a rehabilitation counselor regarding the inability of a person testing poorly on an IQ test to attend college (notwithstanding the fact that the person held a college degree), the draft LOF was returned with a recommendation that the investigation was inadequate. The case was eventually closed with a finding of compliance without attorney or EOS concurrence.

The OCR's own statistics support the staff's assertions that few LOFs citing the school districts for violating the laws have been issued since 1987. Of the 112 draft LOFs submitted to headquarters in FY 1987 and 1988 (through June 15, 1988), only seven were approved. The vast majority, 92, were resolved with a "violation corrected" letter. Query, however, whether the settlements in those 92 cases which were closed with "violation corrected" letters, resolved all of the legal issues which necessitated the violation LOFs.

In lieu of issuing violation LOFs, the agency has indicated that it places emphasis on voluntary settlements and prefers to issue "violations corrected" letters. While negotiation and settlement is a desirable goal and is emphasized in the Civil Rights Act, however, the agency must use its authority to issue letters citing the schools for violations where needed to enforce the law. To do less is a dereliction of the agency's mandate.

Written LOFs which cite violations are necessary either because the recipient (school district) seeks something in writing which sets forth the entire case in order to convince a legislature to allocate the funds required to remedy the violation, or because the recipient is intransigent and such a letter would prod the institution toward settlement negotiations. Thus, while most field staff stated that they seldom need strong, formal noncompliance LOFs to establish a record and obtain a remedy, such letters are sometimes needed and the agency has made it virtually impossible to obtain them.

It is unclear to Committee staff why, other than for the sake of political and ideological purity, noncompliance LOFs have been distinguished from compliance LOFs and are required to be approved in Washington. To resolve the current problem regarding the issuance of noncompliance LOFs by headquarters, Committee staff concur with the regional office staff who recommend that, consistent with previous OCR policy, such letters should be approved and issued by the regional offices, with copies sent to headquarters.[97] In order to insure consistency of policy and legal standards, the OCR's Quality Assurance Program should be reinstituted and utilized on a frequent basis.[98]

4. DEVELOPMENT AND DISSEMINATION OF NATIONAL OFFICE POLICY

Exacerbating the problem of the lack of meaningful guidance and support from the National office during the Reagan years is the apparent dearth of written substantive enforcement policies issued by headquarters. Field staff noted that much of the OCR's policies on substantive legal issues in recent years were generated in the form of responses to draft LOFs sent from the regional offices, "marginal notes" on the LOFs returned to the field, or in the form of telephone calls from the National office. Rarely would there be policy directives which would be disseminated nationwide and made applicable to all regions. As a result, staff stated that it was difficult to analyze certain complex and unique cases because there was little in writing and there was no predictability as to the headquarters' decisions in such cases. Regional staff was, therefore, left to learn and act on cases "with experience and political instinct." The absence of public notice of policy decisions may have also adversely affected recipients, civil rights advocates and others who have an interest in ascertaining the agency's policies regarding various legal and enforcement-related issues.

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[96] See discussion on pp. 35–36 below.

[97] *See, e.g.*, Memorandum of Understanding Regarding Early Warning Procedures for Letters of Findings of Civil Rights Violations (undated).

[98] See discussion of the Quality Assurance program in section B.1 *infra*.

As an example of the National Office's failure to disseminate policy, the staff noted that there was no guidance on the most fundamental issues such as the quantum and kind of proof required in cases involving free and appropriate education in special education under Section 504 of the Rehabilitation Act or the role of the OCR in cases involving children in penal institutions. In order to determine how other regional offices are handling issues under Section 504, attorneys must resort to the *Education for the Handicapped Law Report*, which may print some OCR regional decisions. Unfortunately, the *Law Report* only prints cases in which its editors have an interest.

Since there are few court opinions interpreting Section 504, it is critical that the National Office provide guidance and share such guidance with and among the regional offices. Notwithstanding such a dearth of information of case law interpreting Section 504, attorneys state that the National Office has forbidden them to rely upon decisions brought under the Education of the Handicapped Act, which is similar in content to Section 504. Attorneys argued that the absence of policy guidance on this and other issues undermined the credibility of the agency. Clearly, such lack of guidance also diminished the staff's ability to enforce laws ensuring nondiscrimination by recipients.

The overrepresentation of minority males in programs for the mentally retarded, when similarly-situated white males are placed in programs for the learning disabled, is another issue for which there is a need for National Office leadership and guidance. Staff identified this as major issue of the decade. Another issue requiring instruction from headquarters involves the discriminatory use of IQ tests and other such testing instruments.[99] In both instances, field staff expressed a desire to learn what is needed to prove a violation of the civil rights laws. They also noted that expertise was needed to develop and adequately prosecute these cases and that the National Office should support the regions in developing such expertise.

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[99] Compare with the *Uniform Guidelines on Employee Selection Procedures*, which is published in the *Code of Federal Regulations* and is utilized by the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs and other Federal agencies.

Staff also requested guidance as to how to proceed in cases in which OCR lacked jurisdiction, but as a consequence of filing a complaint, the complainant suffered retaliation. Moreover, staff requested more instruction on the definition of a "patently frivolous" case and sought more discretion in curtailing investigations of such cases. For example, in one case, a parent of a handicapped child filed a complaint under Section 504 because a nearby school used a pirate wearing an eye patch as its mascot. This parent allegedly also filed under title IX because pirates have historically abused women and under Title VI because pirates has historically participated in the slave trade. A conscientious investigator investigated this case in the same manner as are more substantive cases investigated, spending one week on-site compiling data. The investigation was completed and finally closed as a "no violation" case in 90 days.

It was indicated that a number of policy decisions, when made, are circulated as drafts and are not set forth as the official policy of the agency. For example, the National Office allegedly circulated a draft directive regarding whether a child's handicap should be considered in discipline cases. According to the regional office staff, a final draft of the memorandum was never disseminated.

Staff also noted that when policy guidance is issued, it is often superficial and of little value. For example, in one case involving the validation of a standardized test used for admissions, the regional staff requested information regarding the validity of such cases in view of the discriminatory effects such tests have upon minority students. Headquarters staff allegedly responded in a one-sentence memorandum that this case involved impermissible reverse discrimination because the school in question, mindful of the discriminatory effects of such tests, used other criteria with which to admit minority students.

When legal decisions are submitted to the field from Washington, and are motivated by other than legal considerations, they are never reduced to writing, according to the staff. This *ad hoc* policymaking cannot be challenged, however, because there is nothing in writing as evidence of such a policy. Attorney staff therefore expressed concern that they are being pressed to settle cases with the recipients because they can obtain a better settlement from them that if they were to refer the case to the National Office for an approved LOF letter citing the school district for a violation.

Fearing an unreasonably restrictive interpretation of the law as applied to the cases before the National Office, field staff have resorted to making few requests for policy guidance. As one lawyer commented, "No policy is better than bad policy." Once staff attorney argued that she did not wish to consult OCR on the legal issues because the National Office was "operating outside the law" and this angered her. This sentiment was expressed in every regional office visited. The tactic of circumventing the National Office was viewed as form of "damage control" and has had the logical result of inconsistent policies being implemented in the field. In view of the alternative, this outcome was apparently deemed by the field staff to be "the lesser of the two evils."

The OCR's failure to provide written policy guidance is not a recent development, however. In 1985, the National Women's Law

Center testified before the House Government Operations Committee that the OCR leadership had consistently refused to give written guidance to the regions and used conference calling as a means of providing directives rather than reducing them to writing. It was noted that such policy appeared to have led to "confusion, to inaction, to inconsistency, all to the detriment of the groups in this country that are supposed to be protected by the civil rights laws at issue." [100] As noted above, it was OCR's failure to issue guidance to the regional offices after the *Grove City* decision was handed down that prompted this organization to file suit in *American Association of University Women* v. *Bell* for nonenforcement of the civil rights laws.[101]

There was a clear perception among the field staff interviewed that certain cases were "off limits" to the regional staff and could not be investigated either in compliance reviews or complaint investigations. Most of those issues involve impermissible race discrimination in violation of Title VI. Among the issues which staff were not permitted to investigate include cases alleging racial discrimination in disciplinary actions, ability grouping, assignments to gifted and talented programs, school desegregation, the placement of black students in special education programs, and retaliation against students in violation of Title VI. Some staff also noted that issues involving discrimination against students with limited English speaking abilities and athletics cases under Title IX were also not to be investigated. Committee staff were informed that the National Office would not approve a finding of discrimination in such cases unless there were "horror stories," facts of such egregiousness that an alternative finding was not possible.[102]

An attorney noted that in a case involving the underrepresentation of minorities in a "gifted and talented" program, the National Office informed him to "make the case more generic, less specific" and that the disproportionately few minority students in the program, compared with the overall school population, did not suggest a violation of the statute. In another case, involving within-school segregation and ability grouping, the headquarters office allowed the case to languish for four years. After such an inordinate length of time, the regional office staff were allegedly instructed to perform an additional on-site investigation and were compelled to collect additional, more current data. Staff was unsure what the National Office would do once this additional information was collected. In any event, reportedly, none of these cases was ever resolved.[103] It is not known whether the cases were officially closed or merely left in limbo without final resolution. As one staff person noted, since OCR had given no guidance on racial classification (tracking) cases in eight years, the perceived message was that staff should not pursue such cases.

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[100] *Hearings, supra* note 26, at 72.

[101] *See* n. 73, *supra*.

[102] See Memorandum of Understanding, *supra* note 97, at 1, in which LOFs and enforcement actions were barred in cases related to six policy issues: employment (Title VI, IX, and 504), catheterization (504), psychotherapy (504), discipline (Title VI, IX, and 504), extended school year (504), and intercollegiate athletics (Title IX).

[103] See *OFCCP Report, supra* note 92, for similar findings regarding the OFCCP's failure to take action in cases with which it apparently had substantive, ideological objections.

Throughout the regions, staff noted that then-Secretary Bell expressed his opposition to the federal government's interference with a school's disciplinary actions. Thus, when a regional office proposed to conduct a compliance review of a county school system and its apparently disproportionate use of discipline against minority students, it was allegedly instructed by Washington to provide individual cases of discriminatory disciplinary actions in addition to the statistics in order to receive approval to conduct the compliance review. Eventually, this review was terminated. Staff noted that since 1982–83, they were instructed by headquarters not to conduct compliance reviews involving discipline.

Moreover, staff noted that the National Office had made it virtually impossible to find a violation of the civil rights laws because the standard of proof required to establish a violation of, for example, Title VI, was the stringent "intent" standard, which some staff believed was not required by the courts.[104] The actual quantum of proof required by the National Office has never been set forth clearly in written form, however, making it difficult for the staff to establish a violation. Thus, for example, in cases involving discriminatory discipline policies, staff argued that it is virtually impossible to prove a violation because school districts are too sophisticated to admit an intent to discriminate. Apparently, however, staff felt that such an admission virtually constituted the evidence required to satisfy the National Office that there was a violation of the Civil Rights Act.[105]

The concerns raised by OCR staff regarding the agency's use of the "intent" standard were initially raised in 1982, when a witness testified before the House Subcommittee on Civil and Constitutional Rights that:

> It is not uncommon to read Letters of Finding from OCR which articulate legal standards which are the reverse of those required by the statute and regulations. For example, in an August 1981 Letter of Finding, the Simms Independent School District in Texas was found in compliance with Title IX even though the investigator did uncover sex discrimination in the distribution of athletic awards . . . OCR stated that 'There are no records or other evidence to substantiate that the district's departure from the practice of awarding letter jackets in the student's junior year was for a sexually discriminatory purpose in violation of Title IX' . . . The Department of Education has never announced a formal policy to require proof of intent in Title IX cases. No such requirement has been established by the courts in Texas, either.[106]

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[104] *See Guardians Association et al. v. Civil Service Commission of the City of New York, et al.*, 463 U.S. 582 (1983).

[105] *See* Memorandum to Harry M. Singleton, Assistant Secretary for Civil Rights, From Antonio J. Califa, Director for Policy and Enforcement Service (regarding) The Legal Standards to Be Applied in a Title VI School Assignment Case (Executive Summary) (Jan. 9, 1984); Memorandum to Thomas E. Esterly, Acting Regional Civil Rights Director, Region VII, From Alicia Coro, Acting Assistant Secretary for Civil Rights (regarding) *Daniels v. Board of Education of the Ravenna City School District* Disparate Treatment and Disparate Impact Theories of Proof (February 24, 1987). The latter memorandum expresses the view in more definitive terms that Title VI, and thereby, Title IX, Section 504 and the Age Discrimination Act of 1975, require a showing of discriminatory intent.

[106] *Hearing, supra* note 67, at 31–32.

In light of the above circumstances, the regional office staff indicated a desire for responsible leadership from the National OCR Office in a form that will facilitate the enforcement of the laws within its jurisdiction. Staff suggested that there be a better and more frequent dissemination of policy memoranda from the National Office and, in some regions, improve sharing of policy statements among the regional staff. Moreover, the policies handed down from Washington should be consistent with current law and not simply reflective of the ideological biases of the policymakers. Committee staff concur.

In addition to issuing useful substantive policies consistent with established law, the regional office staff made the following recommendations:

—that the OCR issue more detailed records retention requirements. Unlike the EEOC, for example, the OCR currently has no regulations mandating that institutions retain their documents for a certain period of time.[107] Thus, records involving, for example, discriminatory disciplinary actions are routinely destroyed by the school districts at the end of each school year. In cases involving admissions or hiring, applicant pool data is often unavailable. This lack of data severely hampers the investigation of discrimination complaints.

—Staff recommended that the remedial provisions of Title VI be amended to provide for make-whole relief as does Title VII of the Civil Rights Act of 1964.[108]

—Similarly, Title VI should require that its nondiscrimination provisions be posted in conspicuous areas of institutions covered by the statute.[109]

—OCR should obtain the authority to issue subpoenas for the compulsion of necessary data, and to conduct discovery as is provided in the Title VII regulations.[110]

—OCR should consider adopting the "reasonable cause" standard provided in Title VII, instead of the more stringent standard which OCR currently uses.[111] Staff explained that they must make a finding of discrimination instead of determining that there is reasonable cause to believe that the complainant has suffered discrimination. To make a finding requires substantially more staff investigative time and significantly reduces the number of complaints and compliance reviews which may be investigated. It should be noted that other OCR staff disagreed with this recommendation and argued that OCR currently conducts more thorough investigations because it must reach conclusions and issue findings of discrimination instead of determining whether there is reasonable cause to believe that discrimination has occurred.

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[107] Compare, Title VI regulation, 34 C.F.R. sec. 100.6, which is silent on records retention, with 29 C.F.R. sec. 1602.14, which requires that employers retain records for six months. Where a charge of discrimination has been filed or an action brought by the EEOC against an employer for violating Title VII of the Civil Rights Act of 1964, the employer must retain records until final disposition of the charge.

[108] *See Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 418 (1975).

[109] *See* 42 U.S.C sec. 2000e–10, the Title VII posting requirement, and 29 C.F.R. sec. 1601.30, the implementing regulations.

[110] *See* 29 C.F.R. sec. 1601.16, "Access to and production of evidence; testimony of witnesses; procedure and authority."

[111] *See* 42 U.S.C. sec. 2000e–5.

5. TECHNICAL ASSISTANCE

In the 1980 OCR Annual Report, OCR described Technical Assistance (TA) in this way:

> TA is an essential part of the OCR compliance program. OCR's mandate to enforce Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, is enhanced when the requirements, regulations and guidelines of these authorities are publicized and communicated and institutions are provided assistance in complying with them. TA, a necessary part of an effective compliance strategy, encourages voluntary compliance. TA aimed at voluntary compliance can be less costly for OCR and institutions than reliance on coercive compliance and enforcement activities. The use of TA by recipients substantially increases the ability of OCR to directly and accurately communicate civil rights policies and methods of complying with these policies. As such, the provision of TA not only brings about a more effective civil rights program but also enhances the relationship between ED and its recipients by encouraging them to seek assistance when they have questions on civil rights policies.[112]

OCR's TA program is ostensibly designed to provide information in order to strengthen the capacity of recipients to meet their civil rights obligations. Information is given in the form of printed materials, hotlines, procedural information, curriculum and assessment materials, off-site workshops, telephone and on-site consultations, and training sessions.

The OCR TA program was initiated in 1979. In the early years, TA was conducted in the regional offices by means of mass mailings, OCR-contracted workshops, brochures, and contracted-for clearinghouses for recipients and beneficiaries. In FY 1983, the OCR contracted-out portion of the TA program was phased out in favor of a program operated entirely by the OCR staff. OCR TA efforts were intensified by order of headquarters in 1984. In 1985, the Technical Assistance Management System (TAMS) was fully automated to track all TA including outreach activities.[113] Recipients receive TA for the purpose of learning about their responsibilities under various authorities, and for ascertaining acceptable means and methods of meeting these responsibilities. TA to beneficiaries, including students and parent groups, is purportedly designed to explain their rights under various authorities and to explore acceptable means of securing the acknowledgement and accommodation of these rights.

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[112] *Office for Civil Rights Annual Report to Congress*, U.S. Department of Education, 1980, at 49 49.

[113] *Office for Civil Rights, Technical Assistance Outreach Program*, Oct. 1, 1984—March 31, 1986, Operations Support Service, TA Branch, April 1986, at 1.

Most 1987 requests for TA involved Section 504 concerns. Most TA requests were from recipients; only 425 requests were from beneficiary groups.[114] The paucity of requests for TA from beneficiary groups may be explained, in part, by the fact that OCR has little presence in the communities in which it operates. Regional office staff concurred with this observation. When, for example, Committee staff met with a member of the Seattle County Council who was active in school desegregation and discrimination issues, he stated that he had had no previous knowledge of OCR and was dismayed that the agency had had no active role in resolving the well-publicized racial discord in the county school system.

Regional staff also speculated that during the Reagan years, the minority community members who were aware of OCR have been skeptical of its intent and purpose, particularly in view of the numerous race discrimination cases which have been closed with a finding of "no jurisdiction" or "no violation." Civil rights groups have therefore resorted to filing complaints under the U.S. Constitution or state and local law, instead of seeking assistance from OCR. Unlike racial minority groups, however, the disability community, represented by middle-class and well-educated parent groups, was viewed as more active and sophisticated, and was, therefore, more likely to request TA.

Regional staff in the visited regions expressed reservations with the way in which they were told to provide TA. Although staff appeared certain that TA was a priority of the Secretary of Education, they were less clear as to the amount of TA to be provided to beneficiaries as compared to recipients.

As a result, regional offices appeared to provide varying degrees of TA to recipients and beneficiaries. In one particular regional office, staff were reportedly told by the Division Director not to provide outreach to beneficiary groups—and even though only recipients were offered TA, very few recipients in this regional office requested TA. This same Division Director reportedly directed staff in their meetings with recipients not to answer any hypothetical questions, not to interpret OCR policy guidelines while giving TA, and to answer only written questions.

Staff indicated that headquarters will only approve limited TA to beneficiaries on a case-by-case basis with prior headquarters approval. There is also a charge by many regional staff that TA plans, written by each region, invariably exclude programs of outreach to beneficiaries.

Staff in all of the regional offices seemed confused about the purposes and objectives of TA: some staff observed that TA was usurping the compliance reviews and complaint investigations mandate of the civil rights laws. Staff also noted that headquarters was strenuously urging increased TA, even though many regional staff observed that, in their view, TA was not directly related to the work of their agency.

According to OCR's Technical Assistance Management Systems (TAMS), TA was significantly increased at the regional level in recent years as these data indicate:

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[114] See Appendix M

1984—MARCH 31, 1986: 335 TA ACTIVITIES

	Requests	Report outreach	TA activities
1986	1104	134	1389
1987	1374	364	2003

Nevertheless, staff objected to TA for the following reasons:
—TA requires an inordinate generation of paper-work.
—TA report-writing takes more time than actually providing TA.
—TA delivery by staff is included in work performance evaluations (as directed and closely monitored by headquarters) and staff questioned the appropriateness and fairness of relating personnel evaluations to the quantity of TA provided to recipients or beneficiaries.
—Headquarters assigns a quota of TA efforts to each staff person; staffs are strongly urged to meet the assigned quotas.
—Written reports are designed to suggest that any and all contacts with recipients are TA. Some staff indicate that their regional offices regard any activity with a recipient or a beneficiary, including mere telephone contacts, as TA.
—Although staff is discouraged from participating in all other outreach activities, staff is urged to encourage institutions to request TA.
—TA contacts (numbers) are more important than the substance of TA discussions.
—In order to boost TA contact numbers, one specific case might entail a series of contacts—each contact would be counted as TA.
—Record-keeping is very detailed and closely reviewed by headquarters.

Staff also have suggested that headquarters seems more intent on pursuing and providing TA to recipients, rather than having regions actively engaged in compliance reviews and complaint processing/investigation/resolution. This allegation may be substantiated by testimony made in the 1985 hearing before the Subcommittee on Intergovernmental Relations, in which a former OCR staff member noted that former Assistant Secretary Harry Singleton directed staff to inquire as to whether compliance reviews could be substituted for TA.[115]

Although recipients are assured by investigators that regional offices will not use TA as a means of determining compliance, recipients, reportedly, nevertheless tend to be uneasy about TA. Moreover, staff indicated that recipients sometimes are told that TA is a way to avoid a compliance review.

Some school districts, upon completion of a TA effort, wish to know if they are in compliance with the civil rights laws. Investigators state that such a question places them (the investigators) in an untenable situation. To determine compliance, an investigation would have to be conducted. However, if TA were provided, and a school district was later investigated for compliance, regardless of the outcome of the investigation, the regional office would lose credibility with those institutions which would be reluctant to request TA in the future.

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[115] *Hearings, supra* note 49, at 152. See also discussion of this issue in section IV.A.7 *infra.*

Thus, technical assistance, as conceived and implemented by OCR headquarters, presents a dilemma for the field staff, mainly because of headquarter's determination to conduct a program devoid of a substantive monitoring and enforcement focus, and because of the OCR's apparent emphasis on the quantity of TA provided.

Regional staff recommended that TA not be used as a substitute for the statutorily-required enforcement mechanisms in place, and that there be a better balance between TA for recipients and outreach to beneficiary groups. It was also suggested that staff providing TA should not also be assigned to enforcement duties. In addition, staff recommended that OCR should take active measures to make itself known to the minority community within its regions and that it should institute a posting requirement so that potential discriminatees are made aware of their rights to file complaints with OCR. Lastly, it was suggested that in regions in which there are language minorities, including Spanish-speaking persons, there be staff assigned to TA who are capable of conversing in such languages.

6. MONITORING ACTIVITIES

The OCR *Investigation Procedures Manual* defines monitoring as:

> A method used by OCR to follow the compliance progress of a recipient who, through the complaint or compliance review process, was found in violation of a law under OCR's jurisdiction. Through monitoring OCR verifies whether a recipient is implementing an approved OCR compliance plan (i.e., plan for corrective action) and confirms that the implemented plan has successfully corrected the violation.[116]

The *Manual* also states that OCR must monitor all recipients who promise to come into compliance with the law at some future date.[117] A recipient found to be in partial compliance with a particular regulation can be given an opportunity to be found in compliance if the recipient institution promises in writing that it will implement remedial actions to correct a failure to comply with civil rights regulations.

An assurance of remedial action can result in a letter to the recipient, finding the recipient in compliance based on its written assurance of corrective action to take place at some future time. The regional office, in a "violation-corrected" letter to the recipient, will further indicate that:

—based on the written assurance of implementation of remedial action by the recipient, OCR would declare it to be in compliance (with the specific violation[s]);

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[116] *Manual, supra* note 85, at 69.

[117] *Id.*

- continued findings of compliance would be based on carrying out the provisions of the assurances;
- failure to carry out the terms of the assurances can result in a violation finding and the initiation of enforcement activity, or most often results in another "assurance";
- compliance with assurances and commitments would be monitored by the regional office.

Monitoring may take the form of a desk review of progress reports submitted by the recipient or an on-site visit to the recipient to verify the information submitted.[118] A desk review is deemed to be sufficient when the recipient submits "documentary evidence verifying its actions." [119] On-site investigations may be appropriate when:

- a complainant or other persons notify OCR that the recipient is not implementing the compliance plan;
- compliance with the issues is difficult to verify through written documents;
- OCR has reason to believe the recipient may be having difficulty implementing the compliance plan;
- documents received by OCR demonstrate inconsistencies or conflicting information;
- progress reports submitted by recipients show the recipient is behind the schedule agreed-upon for compliance.[120]

Thus, it appears that on-site monitoring reviews are performed only in exceptional circumstances, a highly questionable practice, particularly when compliance is most-often based on a recipient's promise to take remedial actions.

If the recipient has failed to meet the remedial commitments, a second Letter of Findings is to be developed by the regional office and cleared through headquarters.[121]

Regional offices have varying interpretations and understandings concerning the monitoring of recipients found in violation. In some regions, the monitoring effort, as stated by several investigators, is sporadic. In other regions, there are investigators who indicate that they fail to monitor because the process is too lengthy, or because the *Adams* time frames, which apply to cases in the investigative stages, militate against expending valuable time monitoring cases, as case monitoring is not subject to the time frames. Thus, monitoring closed cases, when there are others in the investigative pipeline which are governed by *Adams* and are therefore conferred higher priority status, may be viewed as compromising an investigator's record for adhering to deadlines, and an investigator's perceived productivity.

Additional observations by regional staff indicate that:

- many monitoring activities are conducted over the telephone which, in the view of a number of investigators, is generally insufficient and may be even detrimental to effective monitoring;

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[118] *Manual*, at 69.

[119] *Id.*

[120] *Id.* at 69-70.

[121] *Id.* at 70.

—funds necessary for on-site travel are totally inadequate, resulting in many instances in inefficient, ineffective monitoring activity;
—a person or persons involved in a particular compliance investigation may not be involved in the monitoring of the particular agreed-upon remedy in that case, thus causing a potential loss of continuity, prior knowledge, and appropriate familiarity with the particular case.

Some regional staff admitted that only about 20 percent of their cases are actually monitored, and that beneficiaries do (what these regions call) "self-monitoring." Other regions, attempting to provide some degree of consistency, expect recipients to write definitive plans for remedial action, and to adhere to these plans.

When the Committee requested data regarding the docket number, recipient, closure dates, report due dates, actual reports received dates, desk audit due dates, dates when OCR responses went out, whether additional follow-up was or is required and the (jurisdictional) bases of the cases subject to monitoring reviews since 1981, the OCR responded that these data were not available in OCR's computer system. "All such information is kept in each case file stored either in each regional office or in a Record Center."[122] Thus, neither the Committee nor OCR's national office can currently determine with any certainty whether the required monitoring activity is taking place. The question therefore arises as to whether the regional offices' monitoring activity is being effectively evaluated, particularly since monitoring reviews are not counted toward meeting the *Adams* time frames. Monitoring apparently receives very low priority even though it is critical in cases which have been closed by a "violations corrected" letter in which recipients have merely promised to take certain future actions. If OCR does not actively monitor to determine whether the recipients' promises to comply with the law have been kept, however, then it effectively fails to enforce the laws entrusted to it and it violates its own mandate.[123]

This result is not remedied by the fact that some complainants supplement the monitoring process by notifying OCR when the recipients have not acted as they agreed. Shifting the burden of oversight and compliance onto the recipient is inconsistent with the agency's enforcement mandate. Moreover, it is likely that in many cases, the complainants either get older and graduate (and, therefore, fail to continue to monitor their cases) or give up in frustration with the lengthy and arduous process of obtaining relief. Lastly, in compliance reviews there are no complainants, and therefore, there is no one to notify the OCR if the school does not comply with the previous agreement.

The NAACP Legal Defense and Educational Fund has therefore suggested that OCR abolish the "violation corrected" Letter of Findings and return to the prior practice of issuing LOFs with findings of fact and conclusions of law prior to the negotiation of corrective action.[124] Issuing a violation LOF which remains outstanding until corrective action is implemented provides a greater incentive to compliance than finding a recipient in compliance on the promise of future action (which is inherently a contradiction in terms). Moreover, issuing a violation LOF with a credible threat of a Notice of Opportunity for Hearing accelerates the implementation of the remedy sought. The need for monitoring is therefore diminished and may be more appropriately utilized for the purpose of assuring that corrective action has not been revoked or rescinded. This is vastly preferable to having OCR monitor promises of future action.

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[122] Letter to Honorable Augustus F. Hawkins, Chairman, Committee on Education and Labor, from LeGree S. Daniels, Assistant Secretary for Civil Rights, May 16, 1988.

[123] See similar concerns expressed in congressional hearings held before the Subcommittee on Civil and Constitutional Rights in 1982. *Hearings, supra* note 67, at 23-24, 39.

More importantly, findings of fact and conclusions of law are essential to enforcement and the agency cannot proceed to enforcement before an Administrative Law Judge without them. Without such findings, the recipient fails to comply as promised, the OCR must make its case again, resulting in a waste of valuable resources. Clear, written findings of fact and conclusions of law also increase the probability that a negotiated remedy will cover all violations cited, rather than those for which the OCR has been able to settle in the absence of such findings and conclusions.

This recommendation, if implemented, will de-emphasize the under-utilized monitoring process and will secure effective compliance with the law.

7. COMPLIANCE REVIEWS

As indicated in earlier sections,[125] OCR's enforcement mechanism includes compliance reviews as well as complaint investigations. OCR-initiated compliance reviews are intended to be used to investigate and redress systemic discrimination issues that are typically not raised by plaintiffs. The number, location and issues investigated during compliance reviews are generally left to the discretion of the regional offices.

In its Fiscal Year (FY) 1988 Final Annual Operating Plan, OCR described compliance reviews as follows:

> OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that, while some review activities are required by the *Adams* order, OCR has flexibility in selecting the location and scope of a review. Selection of review sites is based on various sources of information including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media and the general public.
>
> Compliance reviews permit OCR to target resources on problems that appear to be serious or national in scope and that may not have been raised by complaints.[126]

During FY 1983 through 1987, OCR initiated 1,231 reviews, averaging 246 per year. The vast majority of compliance reviews focused upon issues relating to handicap discrimination (398) and multiple issues (385).[127] Only 148 or 12 percent of the compliance reviews initiated during those years pertained to race discrimination issues and only 43 or 3 percent related to national origin discrimination. Twenty-one percent of compliance reviews addressed issues of sex discrimination.[128] The proportional distribution of compliance reviews according to bases (i.e., race, handicap, sex, or age) generally tracks the distribution of complaints. While the number of compliance reviews has generally fluctuated between 1983 and 1988 (through 5/6/88), the overall number of reviews appears, generally, to be in decline.

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[124] Letter to LeGree Daniels, Assistant Secretary for Civil Rights, from Phyllis McClure, NAACP Legal Defense and Educational Fund, Inc., April 4, 1988, at 5.

[125] *See* Secs. III A. and IV A 2.

[126] Office for Civil Rights, *Final Annual Operating Plan for Fiscal Year 1988*, 52 Fed. Reg. 239, at 47444, 47445 (Dec. 14, 1987).

During this period, OCR closed 99 percent of its reviews by either finding no violation (27 per cent) or by reaching a settlement prior to issuing a Letter of Findings (72 percent). Only six compliance reviews resulted in enforcement actions initiated and only seven were closed by means of a post-LOF settlement.

In 1983, the *Adams* court set forth general guidance regarding compliance review issues to be investigated.[129] Among such issues were:

—Title VI cases, including a representative number of reviews of discrimination in student assignment in large school districts;
—sex discrimination issues in elementary-secondary and post-secondary education, including the special problems of minority women;
—student and employment problems and practices;
—*Lau*-related issues, geographically dispersed in proportion to the needs of different regions;
—Section 504 issues;
—special purpose districts or schools;
—vocational education of state agencies implementing Methods of Administration pursuant to sec. II of the Vocational Education Guidelines.[130]

In a 1987 policy memorandum, Acting Assistant Secretary Alicia Coro instructed the staff to consider the types of reviews listed in the *Adams* order when selecting issues for review.[131]

Between the years 1984 through March of 1988, the OCR's compliance review program was severely limited by the *Grove City v. Bell* decision which narrowly defined jurisdiction as covering only specific programs and activities which were Federally funded. Issues selected for compliance reviews had to be "related to those specific recipient programs and/or activities defined as the administrative units that further the purposes of the Federal funds."[132]

According to Acting Assistant Secretary Coro's guidance memorandum, each regional office is responsible for identifying issues and recipients for compliance reviews where serious potential compliance problems are indicated. Where there are significant compliance problems that are not included in the memorandum, regional offices must secure prior approval from headquarters.[133] Regional offices must also consult with headquarters regarding complex compliance reviews or when requiring assistance in developing a methodology for conducting a review or establishing jurisdiction.[134]

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[127] See Appendix A.

[128] *Id.*

[129] *Adams* v. *Bell*, C.A. 3095–70, Order of Dec. 29, 1977, at 16, *as modified by* Order of March 11, 1983.

[130] *Adams*, Order of March 11, 1983, at 10–11.

[131] Memorandum of Alicia Coro, Acting Assistant Secretary for Civil Rights, to Regional Civil Rights Directors, Regions I-X, Regarding Revised Guidance for the Selection of Sites for Compliance Reviews, July 14, 1987, Attachment, at 1.

[132] *Id.*

Three standards must be applied in selecting sites for compliance reviews: (1) indicators of compliance problems; (2) site selection considerations; and (3) limitations on site selections.[135] "Indicators" are defined as "evidentiary factors suggesting that a recipient may have a compliance problem subject to OCR's jurisdiction." "Considerations" are defined to be external factors that OCR should analyze in selecting sites. "Limitations" are factors which mitigate against site selection.[136]

OCR regional offices are permitted to use as many indicators as necessary to justify a compliance review. Indicators include survey data, regional sources, and other potential sources. Survey data include Federal and state data which may reveal possible compliance problems. Site selections are not to be based primarily upon survey data, however, but should be supported by other evidence when possible.[137] Regional sources include numerous complaints against a recipient on related issues within the past three years. Other potential resources include data received from state agencies having memoranda of understanding in accordance with the requirements of the Vocational Education Guidelines.[138] Input from community groups, students, faculty, and publications such as *Barron's* may serve as sources of information regarding alleged discriminatory treatment.[139]

The Coro memorandum states that regional offices should avoid selecting sites based upon requests for technical assistance (TA), existing corrective action plans, desegregation plans or court orders, previous reviews or issues which are either too narrow to have the desired impact, or too broad in view of existing resources.[140] As will be discussed below, these articulated limitations on the selection of compliance review sites have been the subject of substantial controversy.

On the exclusion of recipients which request TA from compliance reviews, the memorandum states:

> OCR should assume that any recipient that has requested technical assistance recognizes that it may not be complying with the regulations and desires to eliminate possible discriminatory practices. However, although a site should not be targeted for review just because the recipient has sought technical assistance, recipients that have sought technical assistance should not be routinely ex-

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[133] *Id.* at 2.
[134] *Id.*
[135] *Id.* at 2-7.
[136] *Id.* at 3.
[137] *Id.*
[138] *Id.* at 3-4.
[139] *Id.* at 4.
[140] *Id.* at 6.

> cluded if indicators of specific compliance problems appear to warrant a review.[141]

Regional office staff expressed concerns that the TA program compromises their enforcement role.[142] Moreover, this instruction suggests that while recipients seeking TA "should not be routinely excluded," from compliance reviews, it also implies that such requestors should not be reviewed as a matter of course. Further, implicit in this guidance is the fact that there is a heavier burden upon the regional offices to justify to headquarters why the recipients requesting TA should be selected for a compliance review. Lastly, initiating a compliance review at an institution which voluntarily seeks TA, even if the issues under review are unrelated to the TA given, may deter recipients from seeking TA in the future. This result is contrary to OCR's often-expressed emphasis on voluntary compliance.

The apparent conflict between TA and compliance reviews is made more problematic in view of congressional testimony which indicates that at least one former Assistant Secretary for Civil Rights instructed policy staff to inquire as to whether compliance reviews could be substituted for TA. In the 1985 hearing before the House Subcommittee on Intergovernmental Relations, a witness testified that former Assistant Secretary Harry Singleton asked the OCR Operations Support Service to conduct a study of the feasibility of using TA as a substitute for enforcement and compliance reviews.[143] In response, staff of the OCR Policy and Enforcement Service indicated in a document addressed to Mr. Singleton that "the proposed memorandum presumes that the basic premise of the project is legally appropriate, a presumption which is not presently supportable."[144] This conclusion is apparently based upon the fact that both the OCR regulations and the *Adams* order require OCR to conduct compliance reviews.[145]

In defense of his directive, Assistant Secretary Singleton explained:

> What the compliance review would result in anyway, would be an effort to settle the matter, because our regulations require us to enter into voluntary, or at least attempt voluntary settlement, before we can go to enforcement. Rather than expend resources on something that is very resolvable had the parties known what was required of them could save those resources for more intractable problems. . . It was not an effort to totally do away with compliance reviews.[146]

The Coro instruction memorandum also bars site selections in which there are existing corrective action plans, desegregation plans or court orders. The directive goes on to state that such sites may be selected for reviews on any issues not included in a plan or court order. The NAACP Legal Defense and Educational Fund, Inc. expressed serious reservations concerning this instruction. In a letter to OCR Assistant Secretary LeGree Daniels, Phyllis McClure, staff member of the Fund, wrote:

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[141] *Id.*

[142] See section IV A.5 above which discusses TA.

[143] *Investigation of Civil Rights Enforcement By the Department of Education, Hearings Before a Subcomm. of the Comm. on Government Operations,* 99th Cong., 1st Sess., 152 (1985).

[144] *Id.* at 153.

[145] OCR Regulations, 34 C.F.R. sec. 100.7 (1987); *Adams* Order of March 11, 1983, at 10-11.

[146] *Hearings, supra* note 143, at 154-155.

> I am perplexed and troubled by the exemption of school desegregation plans from the Office for Civil Rights' compliance reviews. Especially in the 17 Southern and Border States, there are hundreds of districts operating under desegregation plans approved by OCR. The July 14th memorandum would appear to be a total abdication of OCR's responsibility to monitor continuing compliance with a desegregation plan in non-court order districts.[147]

While Committee staff appreciate the need for Federal agencies to conserve scarce resources, staff are also concerned that school districts having OCR-approved desegregation plans have been effectively released from oversight because of OCR's failure to conduct compliance reviews in such districts.[148] It is therefore suggested that OCR begin to conduct compliance reviews of desegregation plan school districts.

As discussed in section IV.A.2 above, OCR staff noted that the scope of issues investigated during compliance reviews has significantly narrowed in recent years. The principal reasons used to justify the limiting of issues under review were the *Adams* order which placed time limitations on the duration of compliance reviews, and the *Grove City v. Bell* decision, which limited the jurisdiction of OCR to the specific program or activity receiving Federal financial assistance. Staff also noted that they were prohibited from investigating some issues, ostensibly on policy grounds. Discrimination based upon race or national origin and sometimes, sex, were more likely to be "off limits." Nominations of sites based upon such forms of discrimination were not likely to be approved.[149]

In some regions, school districts are selected for review by means of a random site selection process. This program would involve generating a random list of recipients by computer, from which the regional offices would select a district. After a site was selected, the office would then select issues for review, although such issues may not reveal problems of actual discrimination and OCR would have no indication that the issue existed in the chosen site. This process was initiated by OCR as an experiment in 1984. Three regions (II, III, and IX) were to use random site selection exclusively, and two (VI and VII) would use random site selections for half of their reviews. The other five regions would employ the traditional method of targeting compliance reviews.[150]

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[147] Letter of Phyllis McClure to Mrs. LeGree Daniels, Assistant Secretary for Civil Rights, Sept. 16, 1987, reprinted in Appendix I.

[148] OCR-approved desegregation plans are those obtained by OCR (and its predecessor in the Department of Health, Education and Welfare) in districts which have not been subject to litigation for school desegregation.

[149] *See also*, Letter of Phyllis McClure, NAACP Legal Defense and Educational Fund, Inc., to LeGree Daniels, Assistant Secretary for Civil Rights, April 4, 1988, at 3, (reprinted in Appendix I) in which she urged OCR to conduct more compliance reviews involving within-school discrimination, noting that "some OCR officials are unwilling to enforce the Office's own established Title VI policy." The letter also noted that "zone jumping," a situation in which white students reside in one school district but attend school in another district in order to escape attending predominately black schools, is another prevalent practice in southern states which OCR never reviews unless prompted by complaints.

The random site selection process was the subject of intense criticism in 1985. The NAACP Legal Defense and Education Fund testified that OCR offered little rationale for initiating this alternative process for site selection and that such a process does not target resources on problems which appear to be serious or national in scope.[151] The Fund did acknowledge, however, that random site selection could serve to distribute compliance reviews more evenly among regional offices.[152]

The principal mechanism for selecting recipients for compliance reviews includes surveys of elementary, secondary and vocational institutions. The surveys used are the Elementary and Secondary School Civil Rights Survey, which includes (1) the School System Summary Report (101) and (2) the Individual School Campus Report (102). The two surveys were designed to complement each other and to provide limited verification. These surveys seek a student breakdown by race, sex and handicapping condition on special education placements; discipline statistics (suspensions, corporal punishment, expulsions); certain vocational education statistics; classroom assignments for specific grades and programs; and the number of limited-English-proficient students and their placement in bilingual or English-as-Second-Language programs.[153]

The 1983 *Adams* order required OCR to conduct a vocational survey that would include a more complete universe of schools than existed in 1979.[154] The vocational survey included questions on the proportion of male and female students, racial and language minorities, and handicapped individuals in a given vocational program. It indicated which groups were under- or overrepresented in certain programs and whether they lacked access to certain vocational programs or schools.[155] The vocational survey was a one-time survey required pursuant to the *Adams* order, however, and has not been repeated.

The Elementary and Secondary Schools Survey (101 and 102) is the only source of national data on the composition of racial, gender and handicapped student populations at the school level. From 1967 through 1974 the survey was conducted on an annual basis. During the even-numbered years, 1968, 1970, and 1972, OCR's data collection extended to approximately 8,000 school systems and 70,000 schools.[156] The larger the school district's enrollment, the higher its probability of inclusion. Thus, a large number of minority students would be included in the survey. The even-year survey did not cover every school district in the nation, but did permit a projection of the universe of school districts.[157]

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[150] Office for Civil Rights, *Fiscal Year 1985 Annual Operating Plan*, at 54.

[151] Hearings, *supra* note 143, at 46.

[152] *Id.* at 47.

[153] *Education Week* Sept. 12, 1984, at 25.

[154] *Adams* 1983 order.

[155] *Id.*

[156] Memorandum to Thomas Burns, Office of Intergovernmental and Interagency Affairs, U.S. Department of Education, from William F. Pierce, Council of Chief State School Officers, and Phyllis McClure, NAACP Legal Defense and Educational Fund, regarding the Office for Civil Rights Elementary and Secondary School Civil Rights Survey (101 and 102) 1984 and proposed Vocational Education School Survey, July 2, 1984, at 2.

[157] *Id.*

During the odd-numbered years (1969, 1971, and 1973), the OCR conducted a survey of a smaller sample of approximately 3,000 school districts and 35,000 schools drawn from the universe of school districts surveyed on even-numbered years.[158]

By 1976, OCR had obtained enforcement authority over title IX and Section 504 as well as title VI. In order to obtain baseline data for female and disabled students, it surveyed all 16,000 school districts. In addition, it sent the "102" forms to 3,600 school districts.[159] In spite of massive opposition by school districts and Members of Congress to the burden imposed by such forms, the survey was eventually conducted during the Ford Administration as a result of pressure from civil rights groups.[160]

In 1978, OCR began to collect data on an biennial basis. Although the revised sampling method was designed to include all "high interest" school districts, fewer school districts overall were reviewed and fewer questions were asked becasue the 1976 survey had provided base line data.[161] The methodology guaranteed that over three survey periods, OCR would collect data statistically significant enough to permit conclusions regarding nationwide trends. Moreover, every school district with more than 300 students enrolled would be reviewed once every six years. This revised methodology also provided school districts with predictability because they would know in advance that they would have to respond to OCR's data requests every two years.

In 1984, OCR reportedly altered its procedure for selecting school districts for surveys, partially in response to the Office of Management and Budget's effort to reduce the paperwork burden on school districts.[162] Its proposal adopted a stratified random sample of districts instead of the "rolling sample" of the universe of districts used in 1978 through 1982.[163] The 1984 survey included 3,500 school districts and approximately 21,000 schools.[164] The agency also proposed to conduct the vocational education survey in the same year based upon a sample of approximately 5,000 schools.

The stratified random sample included high interest districts and selected others at random, controlling for geography and size.[165] Large districts were given the option of "subsampling" or surveying only a portion of their schools.

Education and civil rights groups opposed the proposed changes to the OCR's data gathering methodology on the grounds that the previous system worked well and gave school districts advance notice of when they would be surveyed. The groups also argued that the 1984 survey approach would render out-dated the then-current data, making nationwide projections impossible, and would require OCR to conduct a census survey in later years to update the universe of enrollment counts (i.e. students).[166] The revised

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[158] *Id.*

[159] *Id.* at 3.

[160] *Education Week*, September 12, 1984, at 25.

[161] *Memorandum*, *supra* note 156, at 4.

[162] *Education Week*, *supra* note 160, at 25.

[163] *Memorandum*, *supra* note 156, at 6.

[164] *Education Week*, *supra* note 160, at 25.

[165] *Education Week*, June 1, 1988, at 20.

[166] *Memorandum*, *supra* note 156, at 6.

1984 survey would be, therefore, more burdensome in the future than the previous process of conducting the survey over three two-year cycles. These groups also assailed OCR for its lateness in notifying school districts of the revised reporting format and recommended that OCR use the 1982 survey instrument instead for the 1984 forms.[167]

In 1988, OCR is preparing to conduct another survey and has reportedly "quietly inched back toward its old method, rescinding a change that allowed large districts to sample only certain schools and designing the sample to include more districts that have not been surveyed recently."[168] An analysis of OCR's records conducted by *Education Week*, revealed, however, that even with the planned changes, the 1988 survey will not cover 2,000 school districts that were included at least once in the 1978-1980-1982 cycle but will have been bypassed by the surveys done in 1984, 1986, and 1988.[169] Morever, approximately 7,000 relatively small school districts will not have been included since 1976 when every district was surveyed.[170]

OCR regional office staff identified several problems with the surveys. They argued that the data provided is insufficient for identifying a school district for a compliance review. In addition, staff could not rely upon the data and had to verify their accuracy with the school districts targeted for a possible compliance review.

Another major weakness of the civil rights surveys is that the data is self-reported and that the forms are often incorrectly completed with little subsequent verification of the accuracy of the data. It was also noted that the surveys are poorly constructed and contain little meaningful information.

Committee staff recommend that there be increased congressional oversight of the OCR data collection process, as it is critical to the identification and eradication of systemic discrimination and to ascertaining the location of protected groups within the nation's elementary and secondary schools. Staff also recommend that OCR consider the admonitions of its staff and its critics who indicate that the current survey has serious weaknesses which require a comprehensive review, and that OCR take seriously its previously-stated concerns about limiting the paperwork burden upon school districts by utilizing a predictable information collection system upon which they may rely.

It cannot be overemphasized that compliance reviews are a critical component of OCR's effort to eradicate discrimination in educational programs receiving Federal financial assistance. Compared with the Department of Labor's OFCCP program, however, OCR conducts a fraction of the number of compliance reviews annually, although its staff complement is relatively equal and the issues under investigation are similar.[171] While the OCR's principal focus upon complaint investigations emanates from the *Adams* order, and while OCR may have chosen to conduct comprehensive, multi-issue compliance reviews, instead of more narrowly-focused, establishment-level reviews (as the OFCCP reportedly conducts), it remains unclear as to why OCR only conducts an average of approximately 246 compliance reviews per year.

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[167] *Id.* at 7-9.

[168] *Education Week*, June 1, 1988, at 1.

[169] Analysis conducted by *Education Week*, and covered in June 1, 1988 issue; correction in June 8, 1988 issue at 3.

[170] *Id.*

[171] In FY 1986, OFCCP completed and closed 5,152 compliance reviews, compared with 202 by OCR in that year. During this year, OFCCP had 906 authorized FTE and an annual budget of $44.3 million, compared with 843 FTEs at OCR and a FY 1986 budget of $42.7 million.

It is recommended that the agency review its investigative procedures to determine the reasons for the relative paucity of reviews conducted, and that it commit itself to revitalizing its compliance review program and significantly increasing the annual number of reviews performed, *without compromising their quality or narrowing their scope.*

8. THE HIGHER EDUCATION DESEGREGATION PLANS

In 1969 and 1970, the Department of Health, Education and Welfare (HEW) found that ten states' systems of higher education had not eliminated the vestiges of their segregated systems and were in violation of Title VI. The states cited were Louisiana, Mississippi, Oklahoma, North Carolina, Florida, Arkansas, Pennsylvania, Georgia, Maryland, and Virginia (First Group).[172] The States were given 120 days in which to submit desegregation plans. Only five states submitted plans which HEW eventually rejected as unacceptable. The other five submitted no plans at all. No further action was taken against any of the States, however.[173]

As stated in section III.B, the *Adams* plaintiffs filed suit in October 1970 to compel HEW to take enforcement action against the ten states. The Court of Appeals ruled that HEW had to negotiate acceptable desegregation plans with the States, and that plans had to be approved within 300 days or that enforcement actions must commence by that date.[174] In June 1974, OCR accepted desegregation plans from eight states; the Louisiana and Mississippi cases were referred to the Department of Justice.[175]

In 1975, the *Adams* plaintiffs returned to court to seek a ruling finding the eight plans to be unacceptable and not achieving the desired results. In 1977, the Federal district court agreed and held that the plans did not meet the minimal requirements for desegregation.[176] The court ordered OCR to publish criteria delineating the ingredients of an acceptable desegregation plan and to require the states to submit revised desegregation plans according to these criteria.[177] After several drafts, the "Revised Criteria Specifying the Ingredients of Acceptable Plans to Desegregate State Systems of Public Higher Education" was issued.[178] The criteria were developed by a panel of members of the higher education community, civil rights organizations and HEW officials.[179] Among other things, these prescriptive criteria included the development of goals and timetables in the recruitment and retention of students, the elimination of duplication of program offerings among traditionally black and traditionally white institutions, and the desegregation of faculty, administrative staffs, and school governing boards.[180]

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[172] *Failure and Fraud in Civil Rights Enforcement by the Department of Education*, Comm. on Government Operations, 100th Cong., 1st Sess., at 6 (1987) [hereinafter, *1987 Report*].

[173] *Id.* at 7.

[174] *Adams* v. *Richardson*, 480 F. 2d 1159, 1165 (D.C. Cir. 1973).

[175] *1987 Report*, *supra* note 172, at 7.

[176] *Adams* v. *Califano*, 430 F. Supp. 118, 119 (D.D.C. 1977).

[177] *Id.* at 121.

[178] 42 *Fed. Reg.* 6658–6664 (Feb. 15, 1978).

[179] *1987 Report*, *supra* note 172, at 7.

In 1978, the revised desegregation plans of Arkansas, Florida, North Carolina Community College System, Oklahoma, Virginia and Georgia were accepted by the agency. In 1980–1981, HEW issued findings against seven other states which were not among the original 10: South Carolina, Kentucky, Missouri, Delaware, Texas, West Virginia, and Ohio (Second Group). Two years later, after further litigation brought on by OCR's dilatory behavior in completing investigations and issuing LOFs, the court ordered OCR to issue all remaining LOFs by January 1981.[181]

In 1982, the NAACP Legal Defense and Educational Fund reentered court, arguing that the First Group of states had defaulted on a majority of their commitments. Of those states receiving LOFs in 1981, there was little OCR enforcement.[182] As to the Second Group of states, OCR had entered into negotiations, but had not accepted any desegregation plans, and had not commenced enforcement proceedings.[183]

In March of 1983, the Federal district court found that as to the First Group of states, each had defaulted on major aspects of its plan commitments and on the desegregation requirements of the Criteria and Title VI.[184] OCR was ordered to require a revised plan for Arkansas, Georgia, Oklahoma, Florida, and the North Carolina Community Colleges by June 30, 1983, which would assure that all goals would be met by the fall of 1985 or enforcement proceedings would begin.[185] In a separate paragraph of the order the court addressed matters relating to the State of Virginia's plan.

OCR was further ordered to obtain plans fully in conformance with the Criteria and Title VI from Pennsylvania, Texas, and Kentucky. In West Virginia, Missouri, and Delaware, the court found no state-wide or system-wide violation and upheld OCR's decision to require plans limited to single institutions.[186]

By 1979, OCR had complied with the *Adams* court's order with respect to vocational and special purpose schools (*i.e.* schools for the blind, mentally handicapped and deaf), including conducting compliance reviews in identified special purpose schools and developing and publishing compliance standards.[187]

Six of the ten higher education desegregation plans that were part of the 1983 order expired in June 1986 (Virginia, Arkansas, Oklahoma, Florida, Georgia and the North Carolina Community Colleges). Critics, including the Subcommittee on Human Resources and Intergovernmental Relations of the House Committee on Government Operations, and the NAACP Legal Defense and Educational Fund, argued that the ten states whose desegregation plans expired have not eliminated the vestiges of illegal segregation, however, and that OCR has not attempted to enforce the law and seek remedial action.[188] Moreover, critics assert that OCR has used the less stringent "good faith" standard to measure compliance with the civil rights laws, instead of determining whether systems of higher education, in which states had practiced *de jure* segregation, had actually eliminated the vestiges of discrimination.[189] In discussions with OCR headquarters staff, they have denied implementing the "good faith" standard, however.[190]

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[180] 42 Fed. Reg., 6658–6664.

[181] *1985 Hearings, supra* note 143, at 20.

[182] *Id.* at 20–21.

[183] *Id.* at 21.

[184] *Id.*

[185] *Id.*

[186] *Id.*

[187] *Id.*, at 23.

Once the OCR accepts plans from the States, it has the responsibility for monitoring the States' progress by means of evaluating written reports, viewing supporting data, and conducting on-site investigations. OCR regional office staff therefore determines, for example, whether there is parity in the allocation of resources between traditionally black institutions of higher education and traditionally white institutions.

OCR regional office staff who were interviewed during the Committee staff's on-site visits expressed concerns regarding the process used by headquarters to obtain information regarding the States' progress in desegregating their institutions of higher education. Regional office staff indicated that their role in the evaluation of the States' progress in desegregating their dual systems of higher education has been severely reduced to little more than a ministerial role. While in 1980, staff were responsible for assessing the progress of the States, in 1987 they were informed by headquarters staff (orally) that they were not to make legal determinations regarding the sufficiency of the States' progress. Investigators were to provide only a factual delineation of the status of the institutions at the end of the 5-year plans. This factual report was to be based upon the information provided by the States.

Moreover, staff were not informed as to the persons in the Washington office who were assigned to work on the case once the regional factual report was submitted. In one region, staff were also reportedly instructed to destroy all draft documents regarding the status reports on which they worked. Everything pertaining to the field staff's work on the status of the States' compliance was apparently to be kept secret. Staff was also barred from conducting further communications with the institutions involved and were instructed to refer all press inquiries to headquarters.

According to the field staff, the Washington office rewrote the regional factual reports and sent summaries of them to the governors of the affected States with little analysis. Moreover, critical, damaging information revealed in the regional reports was sometimes omitted. This information corroborates findings made in the report of the Subcommittee on Human Resources and Intergovernmental relations in 1987.[191]

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[188] *See, e.g., 1987 Report*, at 8; *Civil Rights Enforcement by the Department of Education*, Hearings before a Subcomm. of the Comm. on Government Operations, 100th Cong., 1st Sess. (1987) [*hereinafter* 1987 hearings], at 16.

[189] *Id.*

[190] Meeting with Gary Curran, OCR National Office, *et al.*, November 9, 1987.

Staff also noted the lack of cooperation received from various higher education institutions when staff made requests for information, and that such intransigence reflected the OCR's failure to aggressively enforce the law. The obstinacy of some of the recipient institutions made the work of the field staff more difficult.

Field staff also commented upon the lack of resources made available with which to conduct the on-site investigations. In one instance, the regional staff had to visit over 50 institutions of higher education in a particular state within 4-6 months, and to complete their written report within that time frame. This time limitation became more acute when states failed to report progress made in areas identified in early desegregation reports as requiring improvement. Due to the lack of staff, the staff in the Elementary and Secondary Division of this region had to be assigned to perform the investigatory work usually conducted by the Post Secondary division staff, all of whom were assigned to work on the higher education desegregation report. The Elementary/Secondary Division had had no prior training in investigating issues related to post-secondary institutions, however. Thus, the outcome of the investigations in such cases may be questionable, at best.

In the view of the regional office staff, much more progress must be made in order to achieve parity between traditionally black institutions and their white counterparts. Unfortunately, OCR, reportedly, has not been instrumental in effecting meaningful progress in this regard, and has not permitted its field staff to assist in achieving such parity.

B. Administrative Issues

1. TRAINING AND QUALITY ASSURANCE

There is almost unanimous agreement that current staff training is inadequate, deficient, and unsatisfactory. What training exists is further described as being insufficient in terms of quality and quantity. A major concern raised by the regional office staff is that headquarters apparently regards training as a low priority endeavor. In addition, staff found the Office of Personnel Management (OPM), which sponsors staff training, to be equally responsible for staff training inadequacies, because OPM cancels too many programs designed to train staff.

In identifying staff training needs, the following courses were determined by staff to be the key to an adequate training program:

—Complaint investigation techniques;
—Case negotiation/mediation techniques;
—Methods of delivering technical assistance;
—Interview techniques;
—Methods of conducting quality assurance audits;
—Entry-level orientation and training;
—Time management;
—Report writing and proof reading;

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[191] *Report, supra* note 172, at 30.

—Supervisory training; and
—Training in the legal standards for determining compliance with the civil rights laws.

Some staff indicated that since their work is highly technical and complicated, they need training or retraining in the civil rights statutes which OCR enforces and the relevant enforcement rules and regulations.

Staff argued that OCR's mandate to enforce the civil rights statutes can be easily compromised, if legal and investigative staff are not properly trained. This issue is particularly acute since the law regarding discrimination in education is constantly changing. In this regard, staff almost unanimously emphasized the importance of education and the need for a staff training center, similar to the OCR Denver Training Center, which was closed in March 1982, and which, according to staff, provided outstanding training of high quality designed to complement the needs of OCR personnel.

The Denver Training Center offered the following courses:
—Basic Complaint Investigation
—Special Purpose Schools
—Student Discipline
—Interviewing Techniques
—Within School Discrimination
—Special Education
—Report and Letter Writing
—Data Sources and Analysis
—Vocational Education
—Employment
—Title VI Overview
—Title IX Overview
—Sec. 504 Overview
—Age Discrimination Act Overview
—Emergency School Aid Act Overview [192]

The OCR explained to the Committee that the Denver Training Center was established in December 1977 "primarily to train an unusually large number of new staff hired in response to court order." OCR reportedly closed the facility after determining that it "was no longer the most effective means of meeting training needs." This decision was based upon the fact that OCR had provided investigative training courses to the investigators hired after 1978. Appendix F provides a listing of training programs offered by the OCR National Office since 1981, excluding courses offered at the Denver Training Center. Among such courses are, "Basic Complaint Investigation," offered in 1981, negotiation training, offered in 1985–1987, and Title IX employment issues, offered in 1985. Other than the Basic Complaint Investigation course which was offered to approximately 500 persons, the other courses appear to have been offered to a small number of participants (*i.e.*, less than 100).

The OCR staff's views resembled those of the NAACP Legal Defense and Educational Fund which wrote, in a letter to the Assistant Secretary for Civil Rights, that the OCR should provide periodic training in current legal developments for all staff, but most especially for the lawyers in headquarters and the regional offices. Experts in civil rights law, both inside and outside the Federal government, could be invited to provide some of the training, as the Equal Employment Opportunity Commission has done on occasion.[193]

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[192] Information provided to the Committee by the OCR, April 1988.

The OCR Quality Assurance program has been the subject of much controversy. Until 1985, the program was housed in the OCR National Office. During Assistant Secretary Singleton's tenure, however, the Quality Assurance Staff (QAS) unit was disbanded and its function was transferred to the regional offices. In that year, a task force was established to "make some assessment about how it could be improved." [194]

Singleton explained his reasons for disbanding the QA program in OCR headquarters as follows:

> Quality assurance, at the headquarters level is another layer of bureaucracy, if you will. Headquarters' quality assurance review has been the source of a lot of problems over the years because of the way the reviews are done. Defects and errors are assessed—very minor, sometimes insignificant things. They are second-guessing regional judgement . . . the thing is that quality assurance, at least in the headquarters area, was looked at as more of a nuisance than it was a help.[195]

In light of the substantial questioning by the Subcommittee, which suggested that the QA program had unearthed significant problems in the regional offices, Singleton's decision to disband the headquarters QA program is highly questionable.[196] This conclusion is underscored by the fact that in its final report of the region's performance in case processing, the QAS found that of 116 cases closed by the regional offices during May and June of 1983, there was an error rate of 28 percent.[197] Of the contents of the report, Singleton claimed to have no knowledge.[198] The House Committee on Government Operations concluded that "when Mr. Singleton received negative reports from QAS, he failed to examine them in accordance with good management practices.[199]

In 1986, Acting Assistant Secretary Alicia Coro indicated in a memorandum to regional civil rights directors that the responsibility for QA would continue to be maintained at the regional level. Her rationale was that "maintenance of the program at the regional level provides prompt feedback to staff on the quality of case work and will enable the regions to remedy any problems identified before a substantial amount of time has elapsed." [200] This memorandum also revealed that there was variation among the regions with respect to the scope of the programs and methods used to assess the quality of casework.

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[193] Letter to LeGree Daniels from Phyllis McClure, *supra* note 149, at 5.

[194] *Hearings*, *supra* note 143, at 168.

[195] *Id.*

[196] See *Id.* at 160–168.

[197] *Id.* at 19.

[198] *Id.*

[199] *Investigation of Civil Rights Enforcement by the Office for Civil Rights at the Department of Education*, House Comm. on Government Operations, 22 (Dec. 30, 1985).

[200] Memorandum to Regional Civil Rights Directors, Regions I–X, From Alicia Coro, Acting Assistant Secretary for Civil Rights (regarding) Regional Quality Assurance Program (April 2, 1986).

The Assistant Secretary established both quality control and case assessment components in the regional offices. Quality control requires "constant assessment of the work in each case to determine compliance with case processing standards." The work units responsible for the case are responsible for quality control. Regional case assessment teams (CATs) are to review closed files. The teams are reportedly composed of experienced staff members from the program divisions, attorneys and staff from the Program Review and Management Services (PRMS) units.[201]

The Coro memorandum suggests that the only apparent means used by headquarters to monitor QA is the semiannual report which is submitted from each regional office to the Deputy Assistant Secretary for Operations. The report includes information regarding the number of cases reviewed under both quality control and CAT and summarizes major problems identified and actions taken to remedy the identified problems.

On the matter of quality assurance, some regional office OCR staff noted that necessary training is not provided for those who are selected to perform this function, in addition to their regular assignments. Regional staffs generally observed that quality assurance efforts are an important aspect of regional office performance, however, and that staff assigned to this function should be highly qualified for the function. The view is that most assigned staff are not adequately prepared in this area.

Staff having quality assurance responsibilities charged that in their examination of selected cases to determine the quality of the total process (from complaint filing/compliance reviewing to case/charge settlement), there were virtually no established:

—procedures,
—regulations/guidance,
—standards (written/oral), or
—methods to avoid subjectivity.

Staffs regarded QA assignments as being low on the regional office's priority of responsibilities. Thus, many staff were concerned about the added work-load burden, if they were so assigned, and observed that training for this assignment was nonexistent.

It is unclear to Committee staff as to the reasons why the OCR transferred the responsibility for conducting audits of its regional operations to the regional offices. Clearly, this is a function requiring the ongoing involvement of headquarters, if only to assure the integrity of the auditing system. Moreover, it is unclear why the OCR would not want to assure itself that its policies were being implemented in a consistent manner, if only to insure fairness to the recipients under investigation and uniformity of policy implementation. This is only responsible management.

Committee staff strongly recommend that the OCR return its Quality Assurance program to the national office, and that it conduct periodic, random audits of its regional offices' case work.

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[201] *Id.* at 2.

While some autonomy provided to the field offices is desirable, failing to monitor the work of the regions constitutes a dereliction of the OCR's responsibility to assure uniformity in enforcement and quality of work.

2. DUPLICATION OF EFFORT/EXCESSIVE LAYERS OF REVIEW

In addition to regional staff confusion over OCR policy, there appears to be substantial concern regarding apparently excessive layers of review in the case processing system of the regional offices. Once a complaint has been received, properly completed, filed, and investigated, it is regional staff's position that management's review of the investigators' investigative reports, as a process, becomes too "bureaucratic" and cumbersome, which often thwarts efficiency and timeliness.

The complaint processing procedures include the preparation of investigative reports which summarize the facts discovered during the investigation. The purpose of the investigative report is to organize and present the information collected, present the analysis of relevant facts, offer conclusions and list recommendations for appropriate action.[202] The investigative report is a comprehensive document, providing an in-depth presentation of the investigators' findings.

The six levels of review of a completed investigative report appeared to follow the same lines of authority in all visited regions, and are as follows:

—Investigator
—Division Director
—Branch Chief
—Case Attorney
—Chief Attorney
—Deputy Director
—Regional Director

At any point in this progression of review, the report could be returned to the investigator for further rewriting, editing, additional information or facts, supportive data, or for other related reasons. In the event a regional office Letter of Findings (LOF) is forwarded to OCR headquarters because of a finding of violation of a civil rights statute under OCR's jurisdiction, the review progression would be as follows:

—Assistant Secretary of OCR
—Policy and Enforcement Service
—Deputy Assistant Secretary
—General Counsel, Department of Education (in controversial cases)
—(L.O.F. returned to the Assistant Secretary, OCR)
—(L.O.F. returned to the sending Regional Director).

If violations are found, therefore, and if the violations cannot be remedied through negotiations between the regional office, the recipient, and (in some cases) the beneficiary—and if an L.O.F. is submitted to OCR headquarters concerning the violations—it is quite possible that such an L.O.F. would have to be reviewed by (and be approved by) approximately 10 persons within the OCR Administration. For this reason, many investigators indicated that they preferred resolving cases of civil rights violations within the regional office, in order to avoid sending L.O.F.s to OCR headquarters. Key to resolving violations in this climate of frustration and excessive duplication is, therefore, continued negotiations with the recipient and other parties, until a remedial action plan can be developed and implemented. Investigators also indicated that keeping a case and resolving it "in-house", made it easier to meet the *Adams* time frames.

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[202] *Manual, supra* note 85, at 51.

Investigative staff commented that legal staff, who routinely review their investigative reports, were often less concerned about legal sufficiency and too concerned about writing style. Another staff view was that the lawyers frequently required more data than was necessary; thus, from the investigative staff perspective, these demands for data slowed the process unreasonably. Attorneys queried on this matter strongly disagreed with the investigative staffs' assertions, but also noted that editing of the investigators' work was often necessary in order to prepare a credible, well-written document.

The Preliminary Report on the *Adams* Time Frames Project, prepared in 1981, indicates that the Committee staff's observations regarding the numerous layers of review for work products is not without foundation. In the Report, which was instituted to evaluate OCR's efforts in processing complaints and compliance reviews, the authors noted that a significant amount of time is lost during the clearance and approval process at all stages. For example, work products are passed from supervisor to EOS (investigator) and between program and legal divisions several times before formal clearance is obtained. The Report also explained: "it appears that cases sometimes are returned by attorneys for further investigation or additional data even though legal clearance was obtained in connection with the investigative plans. . . ." [203] The Report also suggests that policy development had an influence on case processing and that "every possible effort must be made to speed up the policy development process." [204]

Committee staff also queried the regional office staff regarding the apparently vast amount of paper produced in each investigative file, particularly the investigative report. Sample cases provided to the Committee staff included investigative reports of at least 25 pages each. Regional office staff concurred that the amount of paperwork required in order to substantiate a finding was possibly excessive and may contribute to the comparatively low output of compliance reviews.

It is not clear to Committee staff why OCR investigative reports and other case processing documents such as letters of findings must be subjected to so many layers of review in order to achieve accuracy and adherence to the agency's enforcement policies. Moreover, it is unclear as to why the investigative reports prepared must require such voluminous documentation in order to be legally sufficient. It is possible that the numerosity of the review layers and the time therefor expended may be a factor in the paucity of compliance reviews conducted, compared with those at the Office of Federal Contract Compliance Programs of the Department of Labor.[205]

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[203] Memorandum to Clarence Thomas from Antonio Califa, Director, Litigation, Enforcement and Policy Service, and Kristine Marcy, Director, Planning and Compliance Operations Service (regarding) Preliminary Report on the *Adams* Time Frames Project, [Report] at 5–6 (November 16, 1981).

[204] *Id.* at 6.

This *preliminary* review suggests that OCR may wish to investigate the case processing process with a view towards reducing unnecessary paperwork, improving efficiency and producing increased output of compliance reviews *without compromising quality.* This recommendation should not be interpeted to suggest that the Committee is insisting upon quantity at the expense of quality reviews, however. Indeed, it has been said that if OCR conducted 10 substantive compliance reviews of systemic discrimination issues, issues not raised in complaints, and/or issues that have a broad impact—one in each region—these reviews would have more effect than the current number. It is merely recommended that a more efficient review structure and reduced paperwork load may accelerate the rate of compliance reviews conducted, thereby increasing the agency's impact. In light of the apparent shortage of support staff, reducing excess paperwork and the layers of substantive reviews of staff investigative work may improve OCR's overall enforcement effort.

3. CLERICAL/EQUIPMENT NEEDS

Personnel in all of the regional offices visited by the Committee staff agreed that clerical assistance, equipment and other resources are wholly inadequate. Not only have attorneys and investigators had to wait weeks, in some instances, to receive assigned typing, but regional offices have consistently lost clerical staff to higher paying private sector companies.

As of April 23, 1988, the ratio of professional to clerical Full-Time-Permanent (FTP) staff on board was 3.6 to 1 in headquarters and ranged from 3.3 to 1 in Region II to 8.8 to 1 in Region IX.[206]

A major difficulty presented by the loss of clericals is the reported loss of those particular slots when clerical staff leave OCR. The fact that only headquarters can decide if a slot is to be filled (if it is filled at all), creates a serious productivity problem for the regional staff. Many regional staff therefore recommended that they obtain the authority to replace clericals without securing prior approval from headquarters.

In addition, since regional offices cannot compete for more qualified and experienced clericals—because of the low government pay—they must hire those that are less competent, less experienced. A result of this situation is low productivity. The turnover rate in the regions in their clerical pools is quite high; when clericals become efficient and productive, they leave OCR for better paying employment in other sectors. The clerical staff shortage and its impact upon the "already-slow" clearance process was also highlighted in the OCR's 1981 *Preliminary Report on the Adams Time Frame Project, supra* note 203, at 6.

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[205] It is not suggested that the quality of the investigations at the OFCCP are without criticism, however. *See* House Education and Labor Committee staff report on the OFCCP (1987).

[206] See Appendix G.

Staffs also expressed a dire need for more and better equipment including word processors. Currently, in some regions staff are sharing the same word processors because of the severe shortage. Staff therefore recommended that there be a word processor for each investigator, since investigators perform their own typing—due to the shortage and/or lack of experienced clericals.

In addition, staff indicated a need for training in the use of word processors and the accompanying software. Software was requested for tracking purposes, statistical analyses and report writing. It was also suggested that "boilerplate" portions of the Investigative Report, which is often voluminous, should be placed upon the computer for instant retrieval.

Some regional office staff also noted that the space assigned for their offices was being reduced by the General Services Administration. Therefore, in one region, the area designated for files was being eliminated. It was not clear where the files were to be kept after the file space was removed, however.

Staffing shortages have also affected the time in which some staff may have to access OCR files. In one office, for example, staff indicated that they could only retrieve files within the hours of one and five o'clock P.M. Clearly, this limited access time severely constrains the staff's ability to effectively perform their enforcement tasks.

As noted in section III.D., OCR has allowed millions of its budgeted appropriations to lapse over the past eight years. Instead of underutilizing its available resources, Committee staff suggest that OCR seriously review the equipment, space and staffing problems confronting the regional offices and make a good faith effort to utilize all of its funding to improve the quality of work life for its enforcement staff.

V. CONCLUSIONS

In 1983, the Civil Rights Leadership Conference Fund wrote:

> Federal responsibility for preventing discrimination in education is clear. Its source is found in the Constitution and in civil rights laws enacted in the 1960s and 1970s.
>
> When these laws have been enforced vigorously in the past, they have eliminated discrimination and contributed to important gains in educational opportunity for minority, female and disabled students.
>
> Yet major problems of discrimination remain, problems which are clearly the responsibility of the Departments of Education and Justice.
>
> It is against this background that the Reagan Administration's professed concern for advancing educational opportunity, must be judged.[207]

---

[207] *An Oath Betrayed: The Reagan Administration's Civil Rights Enforcement Record in Education,* vi (1983).

As the above quotation indicates, the foundation from which the Civil Rights Acts and their progeny originate is the United States Constitution, which the Reagan Administration and its predecessors swore to protect. The oath of office, taken by the various Secretaries of Education since 1980, has been an "oath betrayed," however. In its failure to enforce the civil rights laws entrusted to it, the Office for Civil Rights of the Department of Education has caused harm to those whom it was established to protect, has shown contempt for the Federal courts, and has defied the Congress which enacted the statutes that this agency was empowered to execute.

Recent reports have shown that by the year 2000, the majority of the new entrants into the labor force will be women and minorities.[208] It is this population which must be educated to meet the employment demands of the 21st century. Equal education opportunity is, therefore, no longer a moral and constitutional imperative, it is essential to the nation's security. It is not a luxury, it is a necessity.

It is hoped that the Administration taking office in 1989 will understand the importance of this matter and will undertake a comprehensive review of the issues raised in this report. "Simple justice" requires it, and the nation's future demands it.

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[208] W. Johnston and A. Packer, *Workforce 2000*, Hudson Institute, Indianapolis, 1987.

APPENDIX A

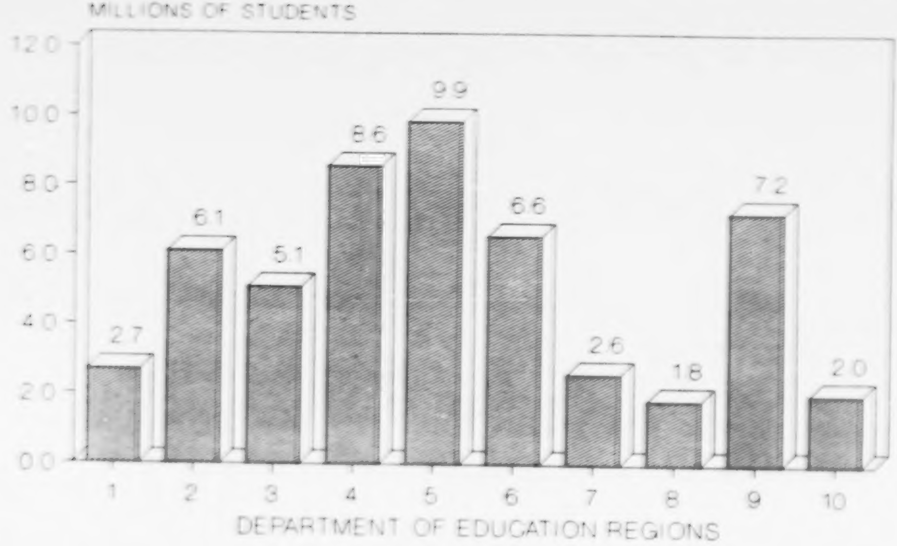
TABLE 1
ESTIMATED TOTAL AND MINORITY ENROLLMENT AT ALL LEVELS
BY DEPARTMENT OF EDUCATION REGION
(FALL 1986)

REGIONS	ENROLLMENT	PERCENT TOTAL ENROLLMENT	MINORITY ENROLLMENT	PERCENT TOTAL MINORITY	PERCENT MINORITY IN REGION
1	2682000	5.1%	281000	2.0%	10.5%
2	6109000	11.6%	2467000	17.2%	40.4%
3	5075000	9.7%	1065000	7.4%	21.0%
4	8574000	16.3%	2559000	17.8%	29.8%
5	9857000	18.8%	1739000	12.1%	17.6%
6	6556000	12.5%	2428000	16.9%	37.0%
7	2580000	4.9%	270000	1.9%	10.5%
8	1837000	3.5%	227000	1.6%	12.3%
9	7247000	13.8%	3078000	21.4%	42.5%
10	2012000	3.8%	237000	1.7%	11.8%
TOTAL	52529000	100.0%	14350000	100.0%	27.3%

NOTE: DATA ARE FOR ALL LEVELS OF ENROLLMENT. ELEMENTARY AND SECONDARY ENROLLMENT DATA FOR THE OUTLYING AREAS ARE FOR FALL 1983. MINORITY ELEMENTARY AND SECONDARY ENROLLMENT IN OUTLYING AREAS IS ESTIMATED BASED ON MINORITY SHARE OF POSTSECONDARY ENROLLMENTS BY AREA. (OUTLYING AREAS INCLUDE AMERICAN SAMOA, GUAM, NORTHERN MARIANAS, PUERTO RICO, TRUST TERRITORIES, AND VIRGIN ISLANDS.) DUE TO DATA LIMITATIONS, ELEMENTARY AND SECONDARY ENROLLMENTS INCLUDE PUBLIC SCHOOL ENROLLMENTS ONLY. NUMBERS OF STUDENTS ROUNDED TO NEAREST THOUSAND. COLUMNS MAY NOT ADD DUE TO ROUNDING.

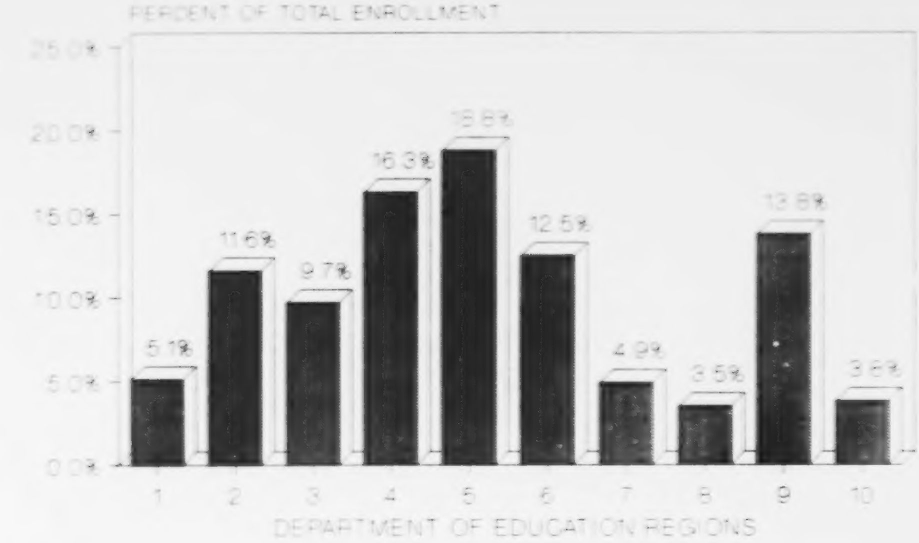
SOURCES: POSTSECONDARY ENROLLMENT DATA FROM U.S. DEPARTMENT OF EDUCATION, DIGEST OF EDUCATION STATISTICS 1987, TABLE 133. ELEMENTARY AND SECONDARY ENROLLMENT DATA FROM U.S. DEPARTMENT OF EDUCATION, CONDITION OF EDUCATION 1987, TABLE 1:27-3. ELEMENTARY AND SECONDARY ENROLLMENT DATA FOR THE OUTLYING AREAS FROM U.S. DEPARTMENT OF EDUCATION, DIGEST OF EDUCATION STATISTICS 1987, TABLE 30.

FIGURE 1-A
FALL 1984 ENROLLMENT
BY REGION



SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 1-B
FALL 1984 ENROLLMENT
PERCENT BY REGION



SOURCE: DEPARTMENT OF EDUCATION DATA

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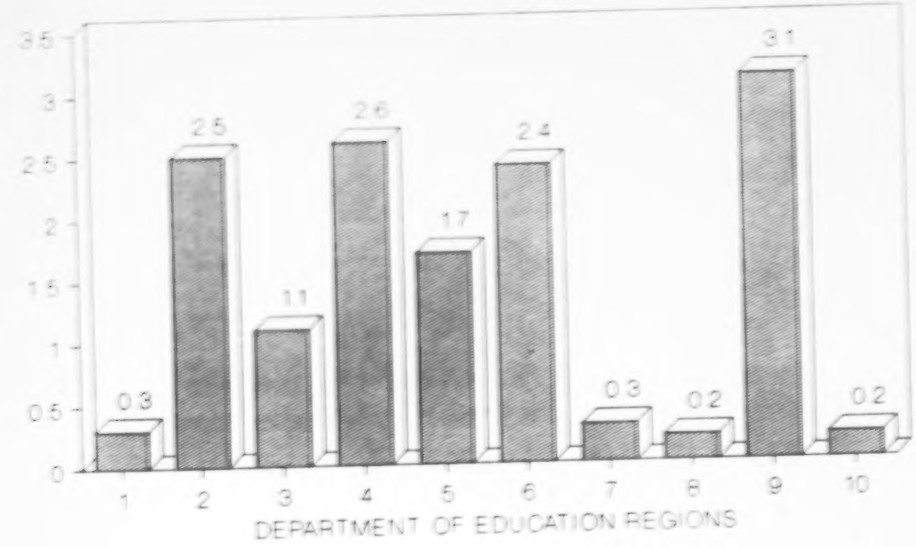
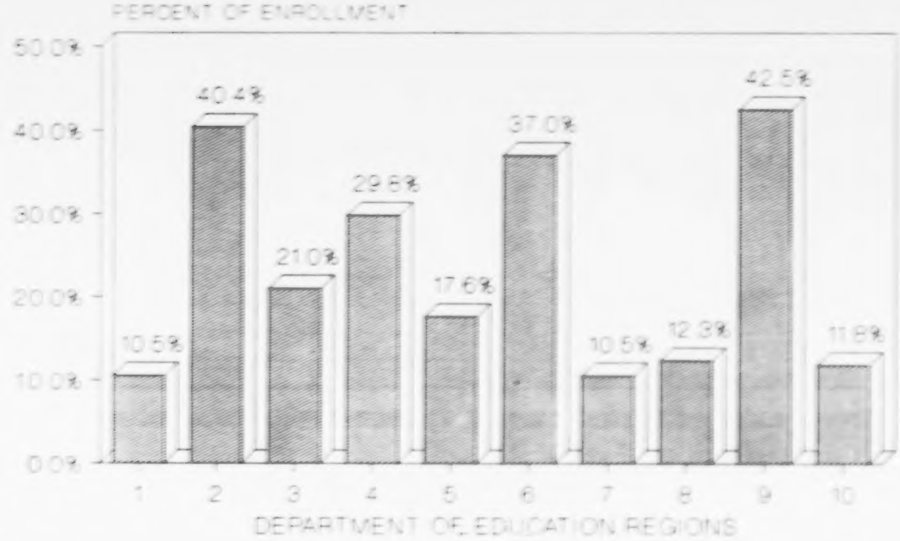
FIGURE 1-C
FALL 1984 MINORITY ENROLLMENT BY REGION



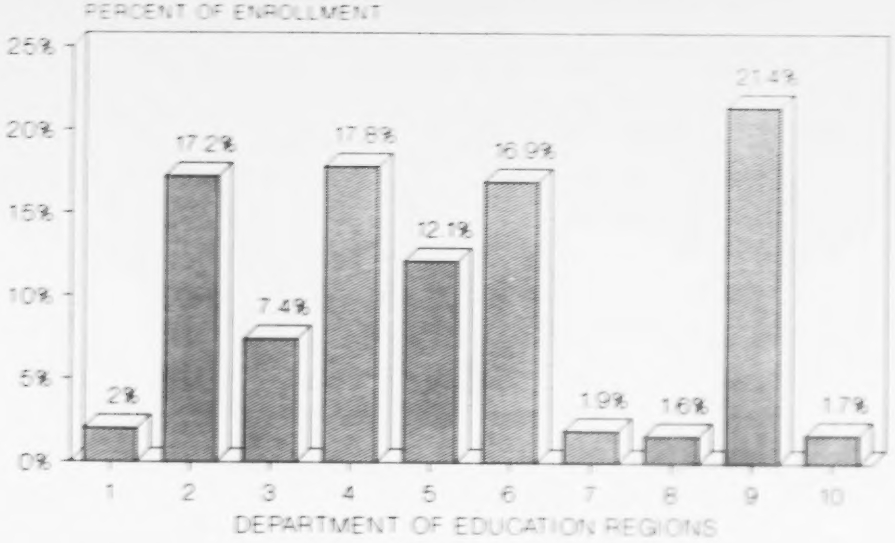
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 1-D
FALL 1984 MINORITY ENROLLMENT
PERCENT MINORITY ENROLLMENT BY REGION



SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 1-E
FALL 1984 MINORITY ENROLLMENT
REGIONAL DISTRIBUTION OF TOTAL



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 2-A
COMPLIANCE REVIEWS INITIATED BY FISCAL YEAR AND BASIS

FISCAL YEAR	RACE	NATIONAL ORIGIN	SEX	HANDICAP	MULTIPLE	TOTAL
FY 1983	44	6	61	72	103	286
FY 1984	21	1	45	89	64	220
FY 1985	31	1	64	93	100	289
FY 1986	21	4	56	70	45	196
FY 1987	31	31	31	74	73	240
FY 1988*	14	3	26	62	42	147
TOTAL	162	46	283	460	427	1378

*THROUGH 5/6/88 ONLY

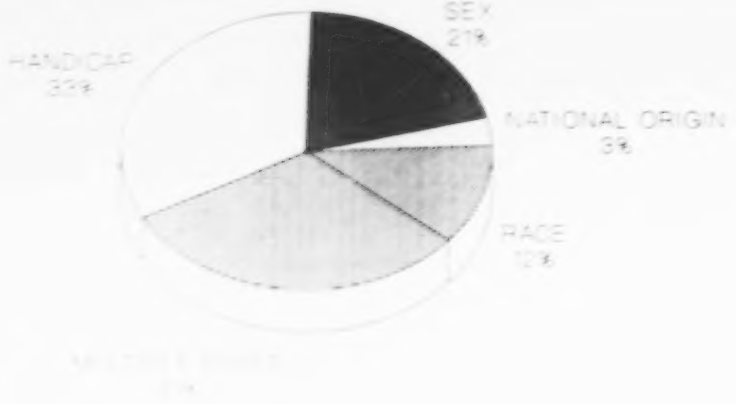
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 2-B
COMPLIANCE REVIEWS INITIATED
BY REGION AND BASIS
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

REGION	RACE	NATIONAL ORIGIN	SEX	HANDICAP	MULTIPLE	TOTAL
REGION 1	8	0	24	13	31	76
REGION 2	5	0	23	57	91	176
REGION 3	55	0	41	69	28	193
REGION 4	24	10	49	28	55	166
REGION 5	12	2	22	72	13	121
REGION 6	12	10	34	45	46	147
REGION 7	23	3	42	55	17	140
REGION 8	1	5	24	15	33	78
REGION 9	17	7	17	82	108	231
REGION 10	5	9	7	24	5	50
TOTAL	162	46	283	460	427	1378

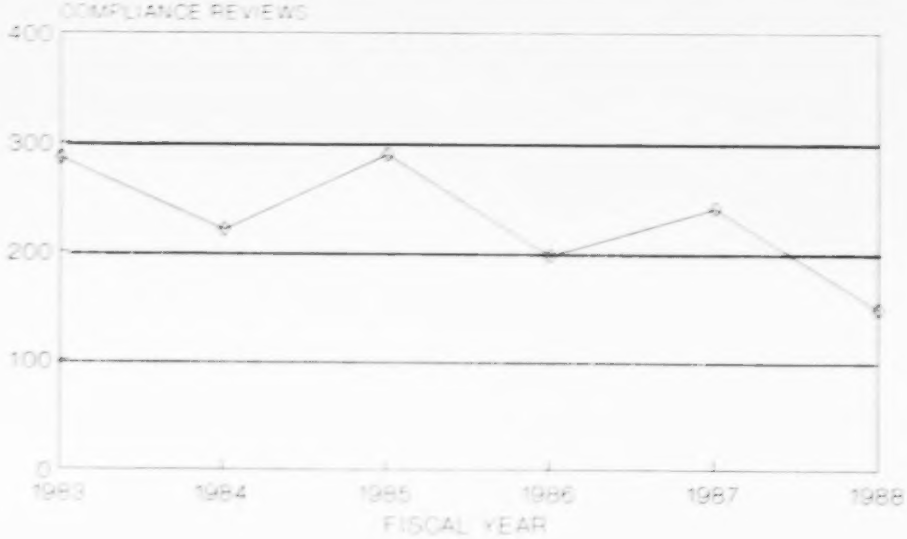
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 2-A
PERCENT OF COMPLIANCE REVIEWS INITIATED FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)



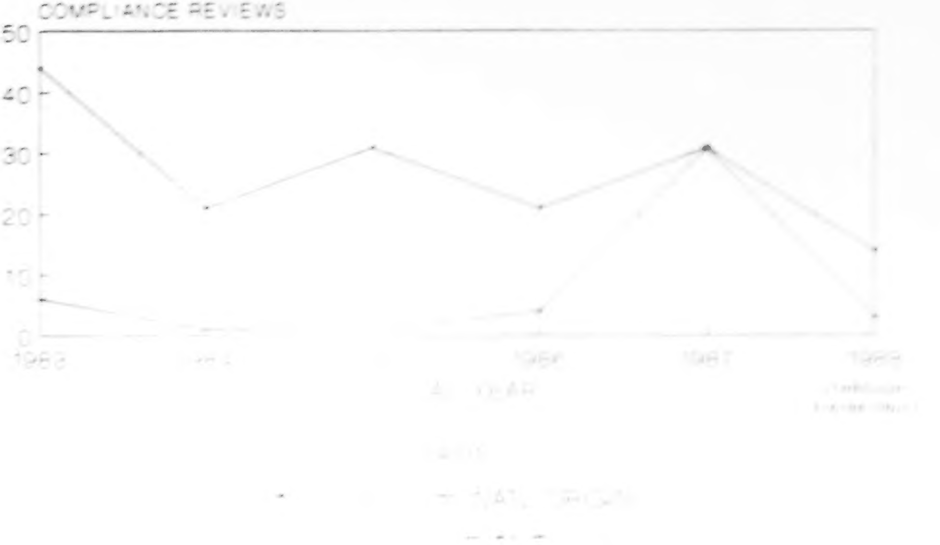
SOURCE: DEPARTMENT OF [illegible]

FIGURE 2-B
COMPLIANCE REVIEWS INITIATED
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)



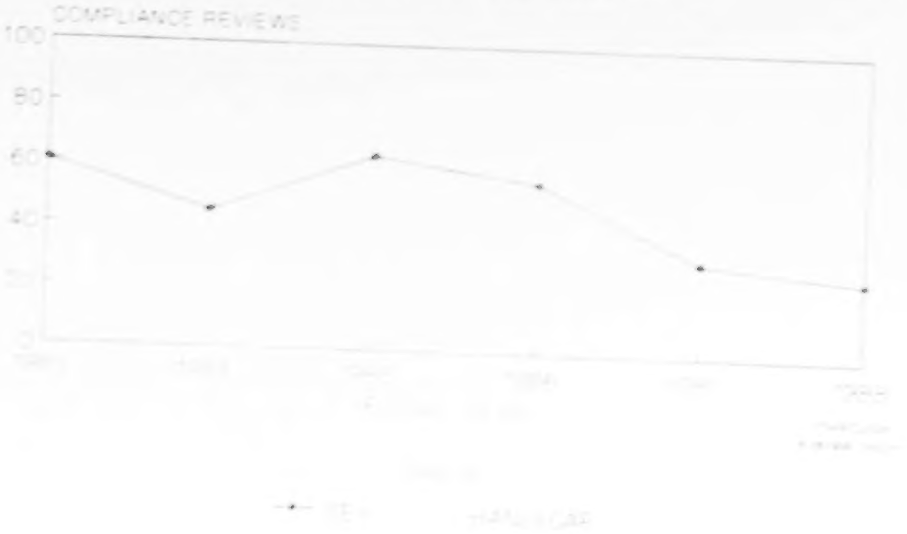
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 2-C
COMPLIANCE REVIEWS INITIATED BASED ON RACE AND NATIONAL ORIGIN



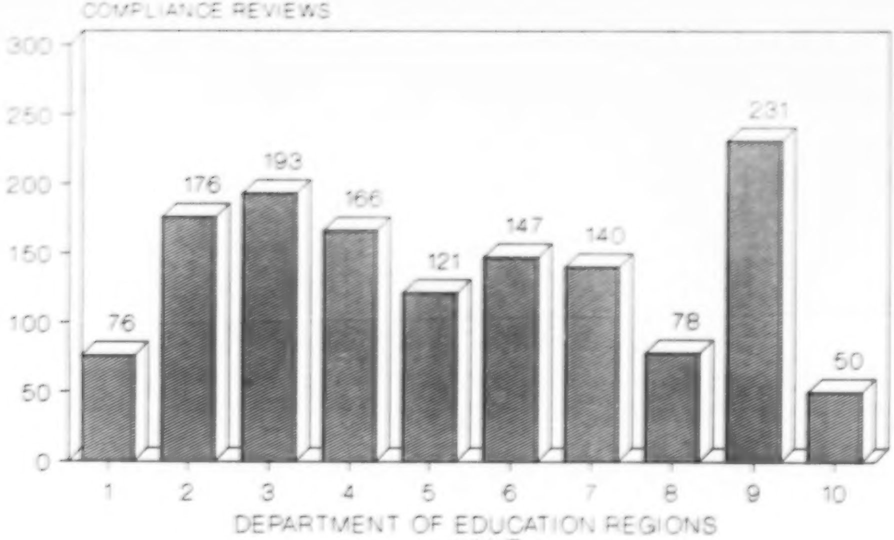
SOURCE: DEPARTMENT [illegible]

FIGURE 2-D
COMPLIANCE REVIEWS INITIATED BASED ON SEX AND HANDICAP



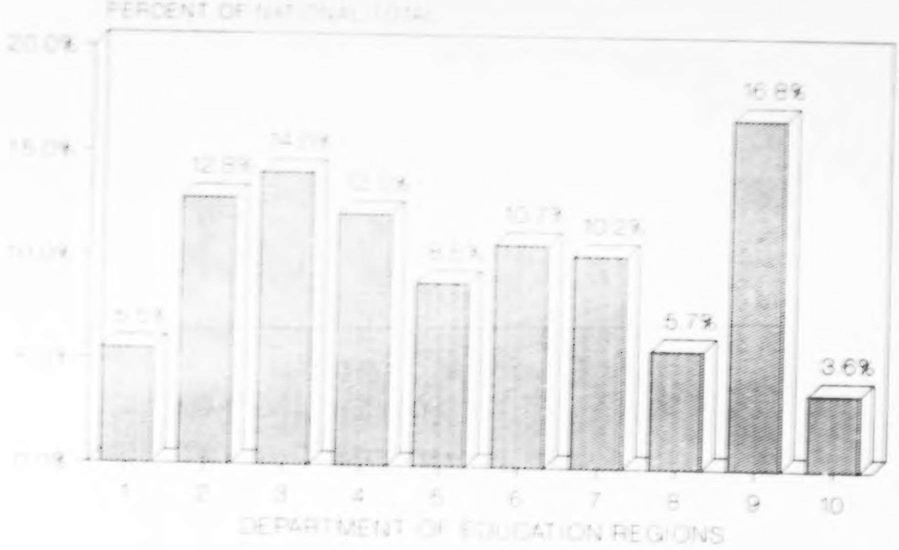
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 2-E
COMPLIANCE REVIEWS INITIATED BY REGION
FY 1983 - FY 1988 (THROUGH 5/6/88)



SOURCE: DEPARTMENT OF EDUCATION

FIGURE 2-F
COMPLIANCE REVIEWS - PERCENT BY REGION
FY 1983 - FY 1988 (THROUGH 5/6/88)



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 3-A
COMPLIANCE REVIEWS CLOSED
BY TYPE OF CLOSURE AND BASIS OF REVIEW
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

BASIS	NO VIOLATION	POST-LOF SETTLEMENT	POST-REFERRAL SETTLEMENT	PRE-LOF SETTLEMENT	ENFORCEMENT	TOTAL
RACE	71	2	1	82	2	158
NATL ORG	23	0	0	27	0	50
SEX	64	2	0	207	1	274
HAND	80	1	0	355	0	436
MULTI	138	2	0	318	3	461
TOTAL	376	7	1	989	6	1379

NOTE: "LOF" MEANS "LETTER OF FINDING"

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

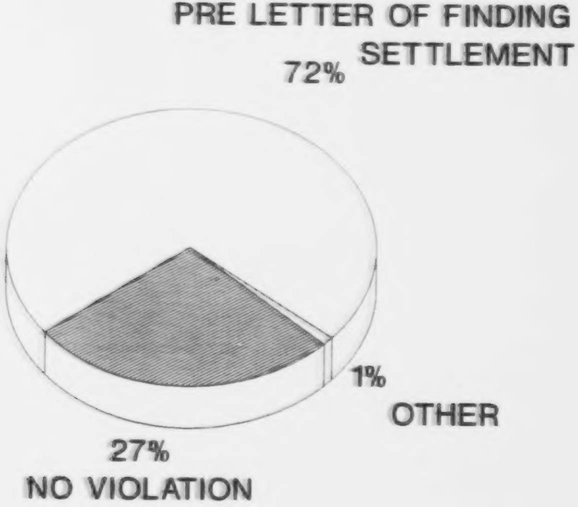
TABLE 3-B
PERCENT OF COMPLIANCE REVIEWS CLOSED BY BASIS AND TYPE OF CLOSURE
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

BASIS	NO VIOLATION	POST-LOF SETTLEMENT	POST-REFERRAL SETTLEMENT	PRE-LOF SETTLEMENT	ENFORCEMENT	TOTAL
RACE	44.9%	1.3%	.6%	51.9%	1.3%	100.0%
NATL ORG	46.0%	.0%	.0%	54.0%	.0%	100.0%
SEX	23.4%	.7%	.0%	75.5%	.4%	100.0%
HAND	18.3%	.2%	.0%	81.4%	.0%	100.0%
MULTI	29.9%	.4%	.0%	69.0%	.7%	100.0%
TOTAL	27.3%	.5%	.1%	71.7%	.4%	100.0%

NOTE: "LOF" MEANS "LETTER OF FINDING"

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 3-A
RESOLUTION OF COMPLIANCE REVIEWS
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA
"OTHER" INCLUDES SETTLEMENT POST LETTER
OF FINDING OR REFERRAL, AND ENFORCEMENT

TABLE 4-A
COMPLAINT INVESTIGATIONS INITIATED BY BASIS AND BY YEAR

YEAR	RACE	NATIONAL ORIGIN	SEX	HANDICAP	AGE	OTHER	MULTI	TOTAL
1981	378	68	355	1,093	9	11	130	2,044
1982	192	42	152	554	7	8	106	1,061
1983	183	42	253	594	7	6	127	1,212
1984	204	33	148	548	8	8	126	1,075
1985	169	29	188	747	11	11	147	1,302
1986	152	23	474	692	15	4	137	1,497
1987	133	37	40	665	8	5	100	988
1988*	96	18	19	395	5	1	55	589
TOTAL	1,507	292	1,629	5,288	70	54	928	9,768

* THROUGH 5/6/88 ONLY

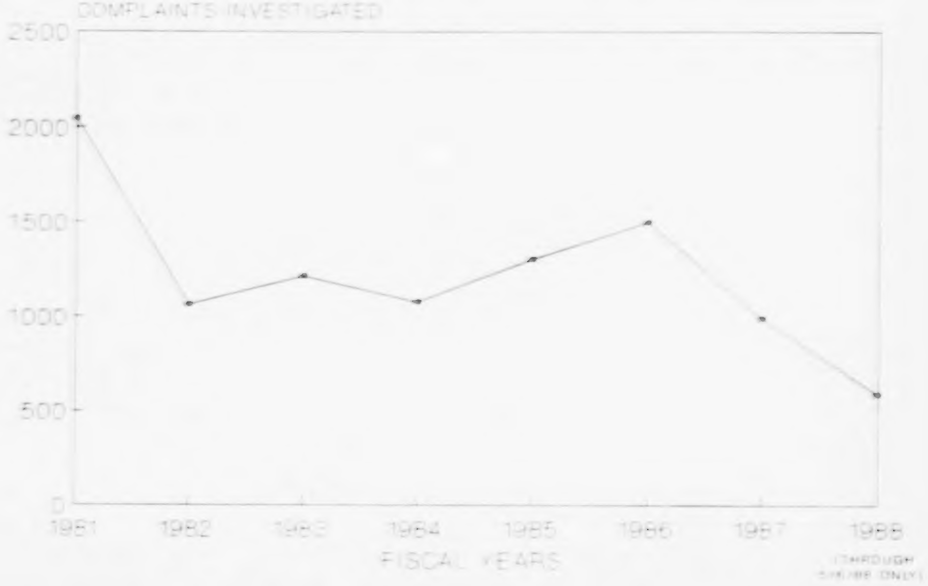
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 4-B
COMPLAINT INVESTIGATIONS INITIATED BY BASIS AND REGION
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)

REGION	RACE	NATIONAL ORIGIN	SEX	HANDICAP	AGE	OTHER	MULTIPLE	TOTAL
1	36	15	152	372	7	1	32	615
2	115	29	281	480	10	2	133	1050
3	128	16	171	661	7	2	71	1056
4	441	10	130	761	15	15	137	1509
5	164	30	229	937	6	2	121	1489
6	283	58	98	415	4	7	79	944
7	124	18	110	656	6	4	80	998
8	31	24	66	138	0	0	28	287
9	121	81	308	627	14	14	193	1358
10	64	11	84	241	1	7	54	462
TOTAL	1507	292	1629	5288	70	54	928	9768

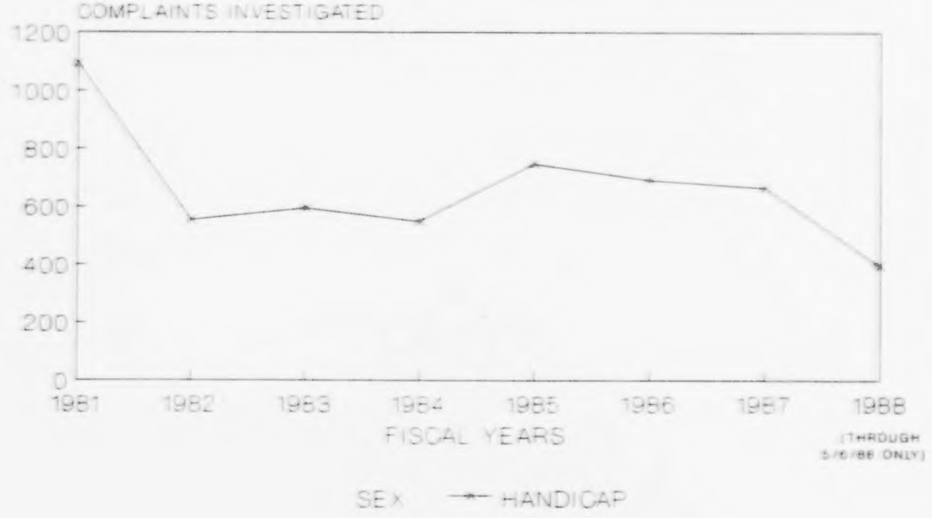
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 4-A
COMPLAINTS INVESTIGATED



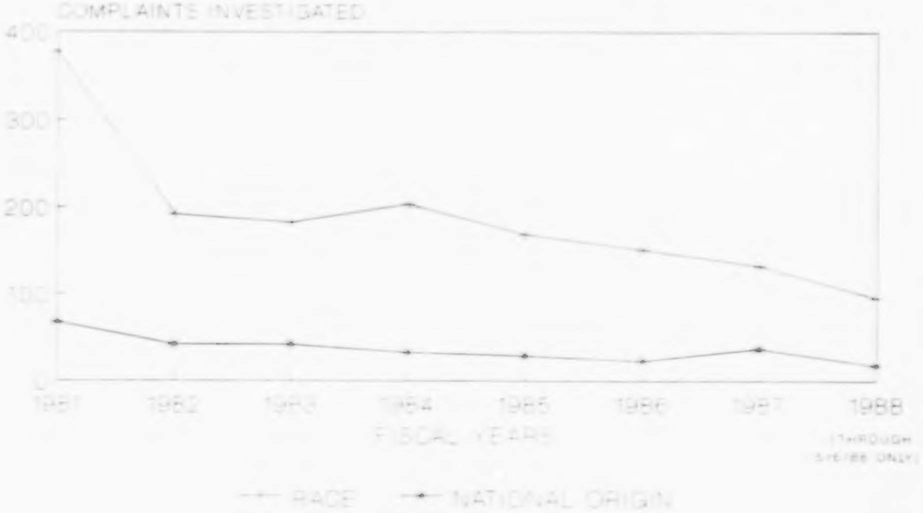
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-B
COMPLAINTS INVESTIGATED
SEX AND HANDICAP BASES



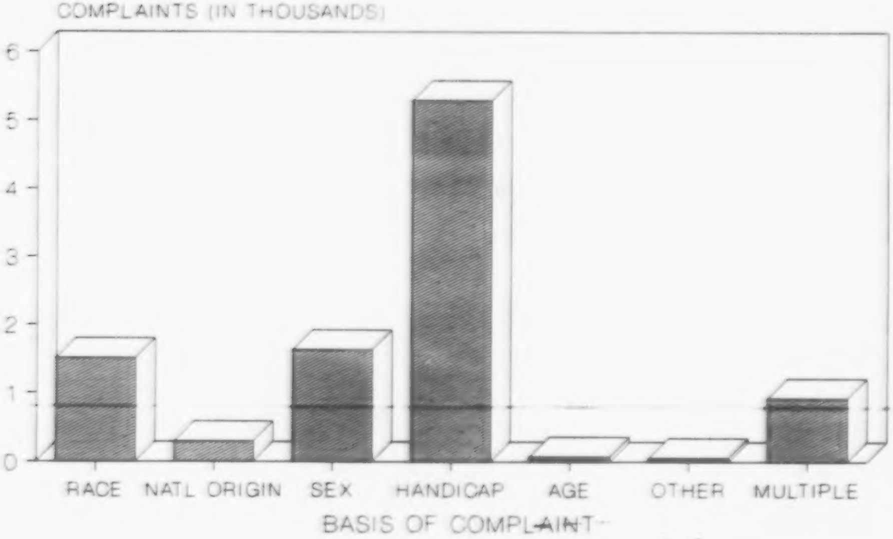
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-C
COMPLAINTS INVESTIGATED
RACE AND NATIONAL ORIGIN BASES



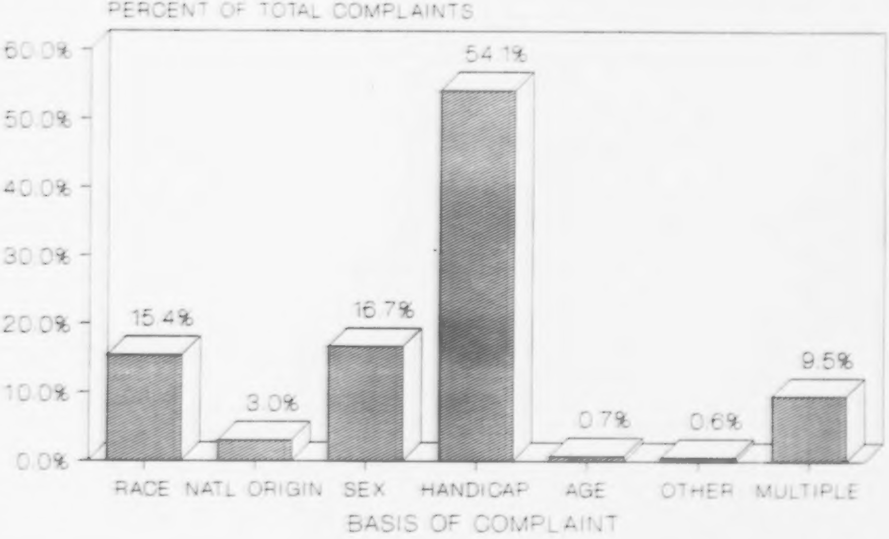
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-D
COMPLAINTS INVESTIGATED BY BASIS
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)



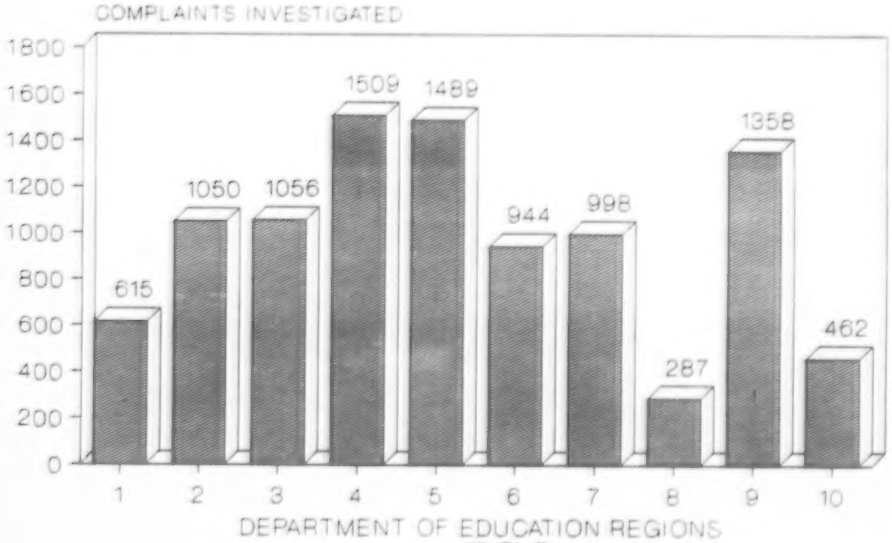
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-E
COMPLAINTS INVESTIGATED BY BASIS
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)



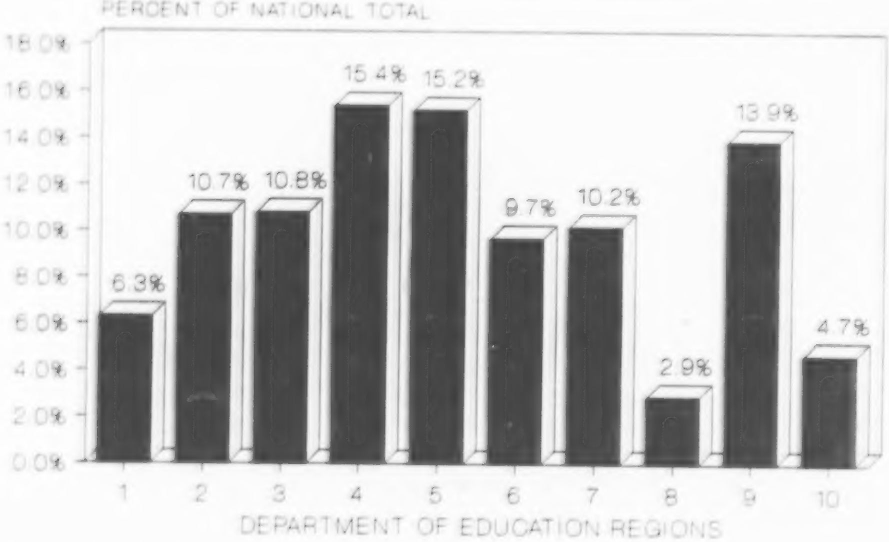
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-F
COMPLAINTS INVESTIGATED BY REGION
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 4-G
COMPLAINTS INVESTIGATED BY REGION
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 5-A

COMPLIANCE REVIEWS AND COMPLAINT INVESTIGATIONS INITIATED BY REGION

FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

REGION	COMPLIANCE REVIEWS	PERCENT REVIEWS	COMPLAINTS INVESTIGATED	PERCENT COMPLAINTS
1	76	5.5%	371	5.6%
2	176	12.8%	676	10.1%
3	193	14.0%	789	11.8%
4	166	12.0%	1101	16.5%
5	121	8.8%	974	14.6%
6	147	10.7%	658	9.9%
7	140	10.2%	712	10.7%
8	78	5.7%	187	2.8%
9	231	16.8%	946	14.2%
10	50	3.6%	249	3.7%
TOTAL	1378	100.0%	6663	100.0%

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 5-B

RATIO OF COMPLAINTS TO REVIEWS

(NUMBER OF COMPLAINT INVESTIGATIONS INITIATED PER REVIEW INITIATED)
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

REGION	RACE	NATIONAL ORIGIN	SEX	HANDICAP	TOTAL*
1	2.00	**	4.38	16.23	4.88
2	13.80	**	6.78	5.65	3.84
3	1.58	**	3.17	7.14	4.09
4	11.50	.70	1.82	21.32	6.63
5	8.00	7.00	6.55	8.79	8.05
6	16.75	4.30	1.59	6.40	4.48
7	2.83	2.33	1.93	8.95	5.09
8	24.00	2.80	2.04	5.13	2.40
9	4.53	6.71	15.53	4.68	4.10
10	5.20	.67	7.14	6.00	4.98
TOTAL	5.78	3.96	3.96	7.92	4.84

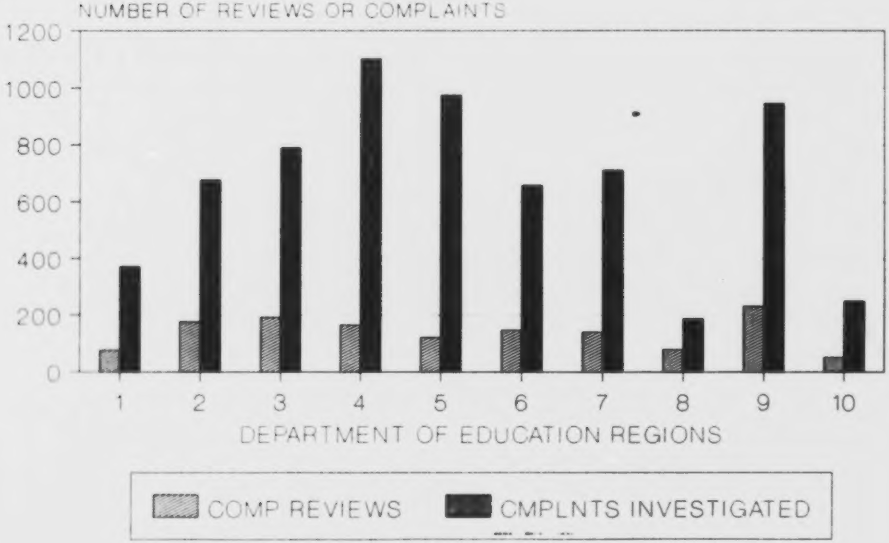
* INCLUDES MULTIPLE BASES REVIEWS AND AGE, OTHER, AND MULTIPLE BASES COMPLAINTS.

** NO COMPLIANCE REVIEWS INITIATED (REGION 1 HAD 9 COMPLAINTS, REGION 2 HAD 24, REGION 3 HAD 11).

THIS TABLE SHOULD BE READ AS FOLLOWS: "IN REGION 1 DURING THE PERIOD FY 1983 THROUGH FY 1988, THERE WERE 2.00 RACE-BASED COMPLAINTS INVESTIGATED FOR EVERY RACE-BASED COMPLIANCE REVIEW INITIATED."

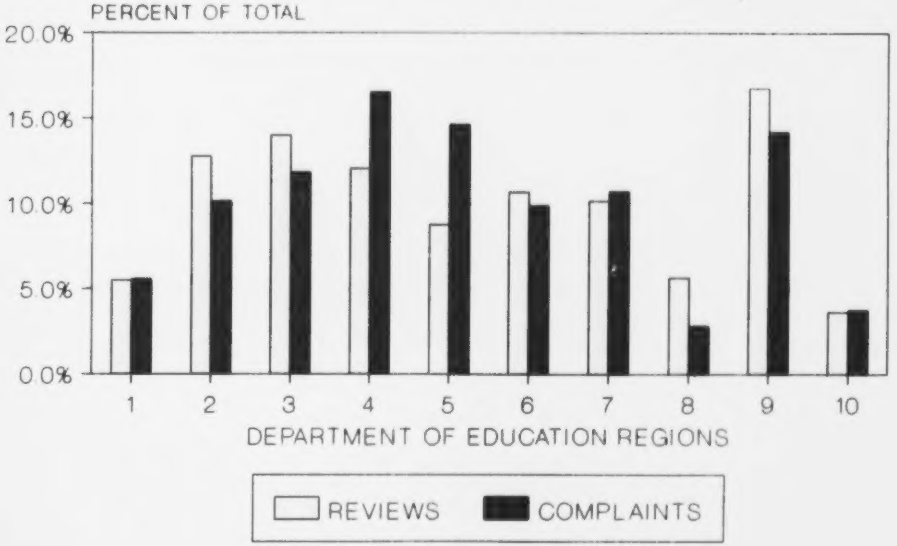
SOURCE: BASED ON DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 5-A
COMPLIANCE REVIEWS AND COMPLAINTS BY REGION--FY83-FY88 (THROUGH 5/6 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 5-B
COMPLIANCE REVIEWS AND COMPLAINTS REGIONAL SHARE -- FY 83 - FY 88 (5/6)



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 6-A
COMPLAINT INVESTIGATIONS CLOSED
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

BASIS	NO VIOLATION	VIOLATION CORRECTED	VIOLATION NOT CORRECTED	TOTAL
RACE	679	116	5	800
NATIONAL ORIGIN	110	35	2	147
SEX	339	350	15	704
HANDICAP	1577	1531	79	3187
AGE	41	6	0	47
OTHER	23	7	0	30
MULTIPLE BASES	390	159	5	554
TOTAL	3159	2204	106	5469

NOTE: A COMPLAINT IS CLOSED WHEN A LETTER OF FINDING IS ISSUED. THESE LETTERS MAY CONCLUDE THAT--(1) THERE WAS NO VIOLATION OF CIVIL RIGHTS STATUTES; (2) THERE WAS A VIOLATION AND IT WAS CORRECTED; OR (3) THERE WAS A VIOLATION AND IT WAS NOT CORRECTED.

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 6-B
COMPLAINT INVESTIGATIONS CLOSED-- PERCENT BY TYPE OF CLOSURE
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

BASIS	NO VIOLATION	VIOLATION CORRECTED	VIOLATION NOT CORRECTED	TOTAL
RACE	84.9%	14.5%	0.6%	100%
NATIONAL ORIGIN	74.8%	23.8%	1.4%	100%
SEX	48.2%	49.7%	2.1%	100%
HANDICAP	49.5%	48.0%	2.5%	100%
AGE	87.2%	12.8%	0.0%	100%
OTHER	76.7%	23.3%	0.0%	100%
MULTIPLE BASES	70.4%	28.7%	0.9%	100%
TOTAL	57.8%	40.3%	1.9%	100%

NOTE: A COMPLAINT IS CLOSED WHEN A LETTER OF FINDING IS ISSUED. THESE LETTERS MAY CONCLUDE THAT--(1) THERE WAS NO VIOLATION OF CIVIL RIGHTS STATUTES; (2) THERE WAS A VIOLATION AND IT WAS CORRECTED; OR (3) THERE WAS A VIOLATION AND IT WAS NOT CORRECTED.

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

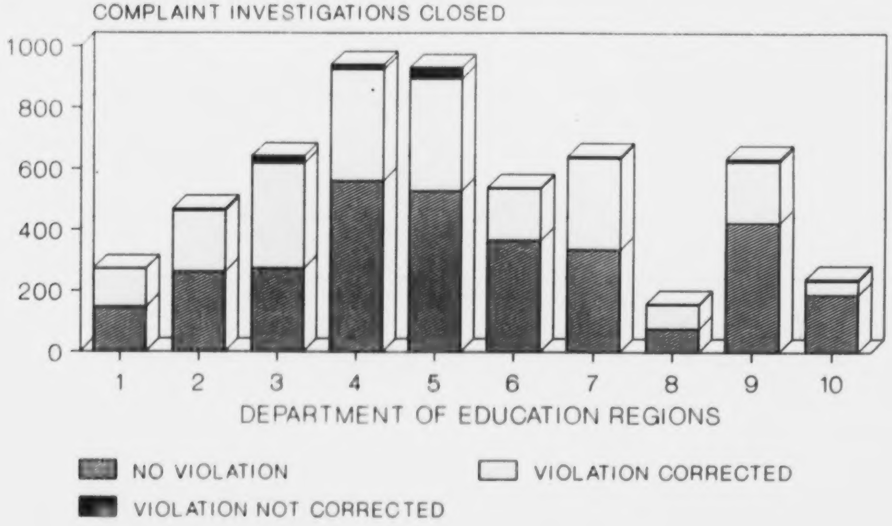
TABLE 6-C
COMPLAINT INVESTIGATIONS CLOSED
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)

YEAR	NO VIOLATION	VIOLATION CORRECTED	VIOLATION NOT CORRECTED	TOTAL
1983	630	474	40	1144
1984	591	357	22	970
1985	617	327	19	963
1986	503	557	21	1081
1987	533	302	3	838
1988	285	187	1	473
TOTAL	3159	2204	106	5469

NOTE: A COMPLAINT IS CLOSED WHEN A LETTER OF FINDING IS ISSUED. THESE LETTERS MAY CONCLUDE THAT--(1) THERE WAS NO VIOLATION OF CIVIL RIGHTS STATUTES; (2) THERE WAS A VIOLATION AND IT WAS CORRECTED; OR (3) THERE WAS A VIOLATION AND IT WAS NOT CORRECTED.

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 6-F
COMPLAINT INVESTIGATIONS CLOSED
FY 1983 - FY 1988 (THROUGH 5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 7-A
OCR ANNUAL APPROPRIATION IN CURRENT AND CONSTANT DOLLARS
FY 1981 - FY 1988

FISCAL YEAR	ANNUAL APPROPRIATION IN CURRENT DOLLARS	ANNUAL APPROPRIATION IN CONSTANT 1981 DOLLARS
1981	$46,915,000	$46,915,000
1982	$45,038,000	$42,241,000
1983	$44,868,000	$40,316,000
1984	$44,396,000	$38,441,000
1985	$45,000,000	$37,650,000
1986	$42,704,000*	$34,789,000
1987	$43,000,000	$34,019,000
1988	$40,530,000	$30,897,000

* REFLECTS FY 1986 SEQUESTRATION

NOTE: CONSTANT 1981 DOLLARS BASED ON OMB IMPLICIT PRICE DEFLATOR FOR NON-DEFENSE SPENDING.

SOURCE: APPROPRIATION DATA TAKEN FROM U.S. DEPARTMENT OF EDUCATION BUDGET JUSTIFICATIONS FOR VARIOUS YEARS.

TABLE 7-B
OCR ANNUAL APPROPRIATION AND AMOUNTS ALLOWED TO LAPSE TO THE TREASURY
FY 1981 - FY 1988

FISCAL YEAR	ANNUAL APPROPRIATION	AMOUNT LAPSED	PERCENT OF APPROPRIATION LAPSED
1981	$46,915,000	$1,121,000	2.4%
1982	$45,038,000	$832,000	1.8%
1983	$44,868,000	$1,468,000	3.3%
1984	$44,396,000	$2,694,000	6.1%
1985	$45,000,000	$2,448,000	5.4%
1986	$42,704,000*	$2,569,000	6.0%
1987	$43,000,000	$1,287,000	3.0%
1988	$40,530,000	$154,000 (EST.)	0.4%

* REFLECTS FY 1986 SEQUESTRATION

SOURCE: APPROPRIATION DATA TAKEN FROM THE U.S. DEPARTMENT OF EDUCATION BUDGET JUSTIFICATIONS FOR VARIOUS YEARS; LAPSED AMOUNTS PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION.

TABLE 8-A
OCR FULL-TIME EQUIVALENT (FTE) EMPLOYEES
FY 1981 - FY 1988 (EST.)

FISCAL YEAR	FTE EMPLOYEES
1981	1,099
1982	978
1983	941
1984	907
1985	913
1986	843
1987	807
1988 (EST.)	820

SOURCE: EMPLOYEE DATA TAKEN FROM THE U.S. DEPARTMENT OF EDUCATION BUDGET JUSTIFICATIONS FOR VARIOUS YEARS.

TABLE 9-A
COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME
FY 1984 - FY 1988 (THROUGH 4/30/88 ONLY)

YEAR	NUMBER OF COMPLAINTS MISSING TIME FRAME
1984	498
1985	338
1986	316
1987	206
1988	102
TOTAL	1460

NOTE: ADAMS TIME FRAMES ESTABLISHED SCHEDULE FOR OCR HANDLING OF COMPLAINTS.

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 9-B
COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME BY REGION AND BY BASIS
FY 1984 - FY 1988 (THROUGH 4/30/88 ONLY)

REGION	RACE	NATIONAL ORIGIN	SEX	HANDICAP	MULTIPLE BASIS	TOTAL
1	2	6	16	87	5	116
2	20	1	16	65	18	120
3	36	5	19	202	23	285
4	91	6	34	122	35	288
5	6	2	23	83	9	123
6	53	6	25	40	15	139
7	5	1	42	95	5	148
8	0	1	2	6	0	9
9	17	20	30	55	51	173
10	7	2	19	27	4	59
TOTAL	237	50	226	782	165	1460

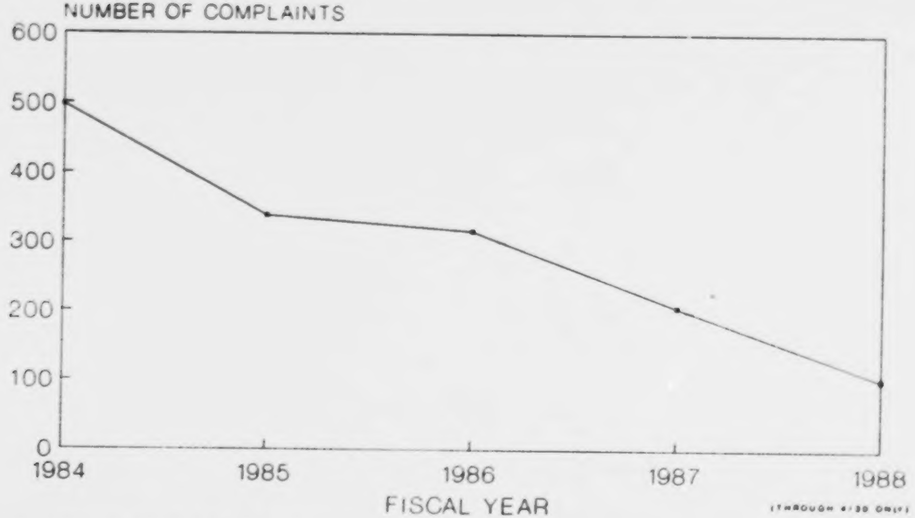
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

TABLE 9-C
COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME BY REGION AND BY FISCAL YEAR
FY 1984 - FY 1988 (THROUGH 4/30/88 ONLY)

REGION	1984	1985	1986	1987	1988	TOTAL
1	59	19	14	24	0	116
2	62	29	5	7	17	120
3	98	77	61	28	21	285
4	93	53	93	40	9	288
5	54	26	35	3	5	123
6	30	15	52	24	18	139
7	12	74	28	27	7	148
8	5	0	0	2	2	9
9	59	33	17	45	19	173
10	26	12	11	6	4	59
TOTAL	498	338	316	206	102	1460

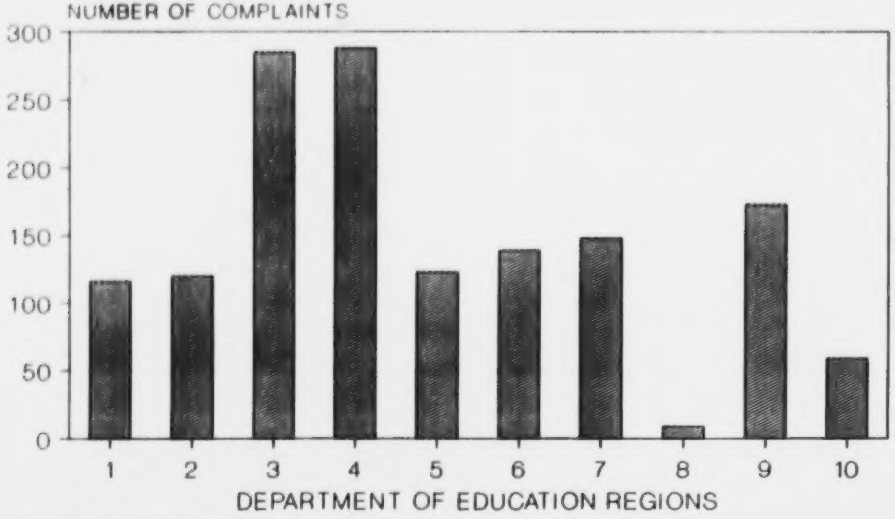
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS

FIGURE 9-A
COMPLAINTS MISSING ADAMS TIME FRAMES
FY 1984 - FY 1988 (THROUGH 4/30 ONLY)



NOTE: ADAMS TIME FRAMES ESTABLISHED SCHEDULE FOR OCR HANDLING OF COMPLAINTS
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 9-B
NUMBER OF COMPLAINTS MISSING AN ADAMS TIME FRAME--FY 1984-FY 1988 (TO 4/30/88)



NOTE: ADAMS TIME FRAMES ESTABLISHED
SCHEDULE FOR OCR HANDLING OF COMPLAINTS
SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 10-A
COMPLAINTS CLOSED BECAUSE COMPLAINANT WITHDREW COMPLAINT
FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)

YEAR	COMPLAINTS WITHDRAWN
1981	358
1982	276
1983	322
1984	345
1985	384
1986	343
1987	421
1988	216
TOTAL	2665

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

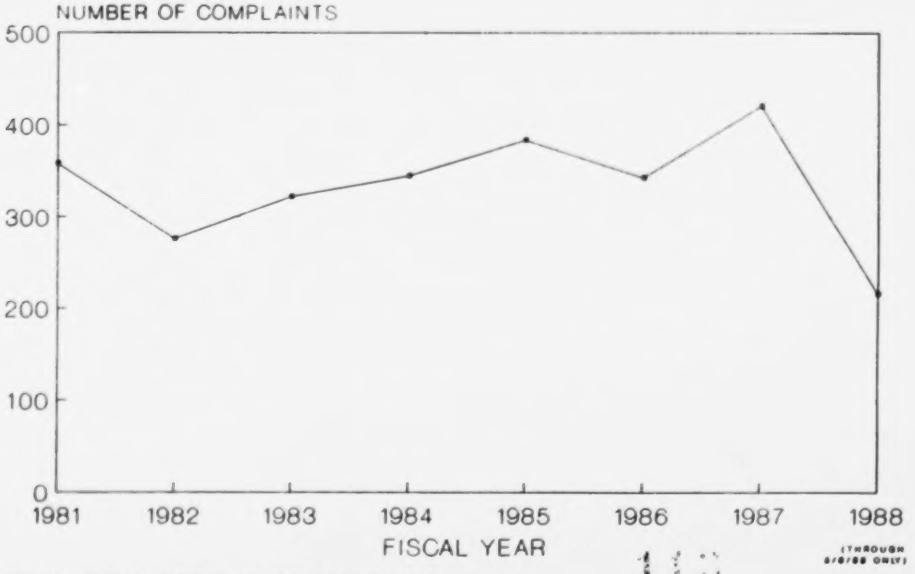
TABLE 10-B

COMPLAINTS CLOSED BECAUSE COMPLAINANT WITHDREW COMPLAINT BY REGION AND BASES FY 1981 - FY 1988 (THROUGH 5/6/88 ONLY)

REGION	RACE	NATIONAL ORIGIN	SEX	HANDICAP	AGE	OTHER	MULTIPLE BASES	TOTAL
1	7	10	21	126	3	1	8	176
2	22	8	28	141	3	2	24	228
3	20	0	15	123	1	3	9	171
4	76	0	33	260	5	9	31	414
5	58	4	37	313	1	2	23	438
6	76	23	17	261	2	3	27	409
7	19	7	13	116	3	5	14	177
8	13	10	4	63	1	3	7	101
9	33	17	46	236	5	9	41	387
10	10	2	43	94	1	4	10	164
TOTAL	334	81	257	1733	25	41	194	2665

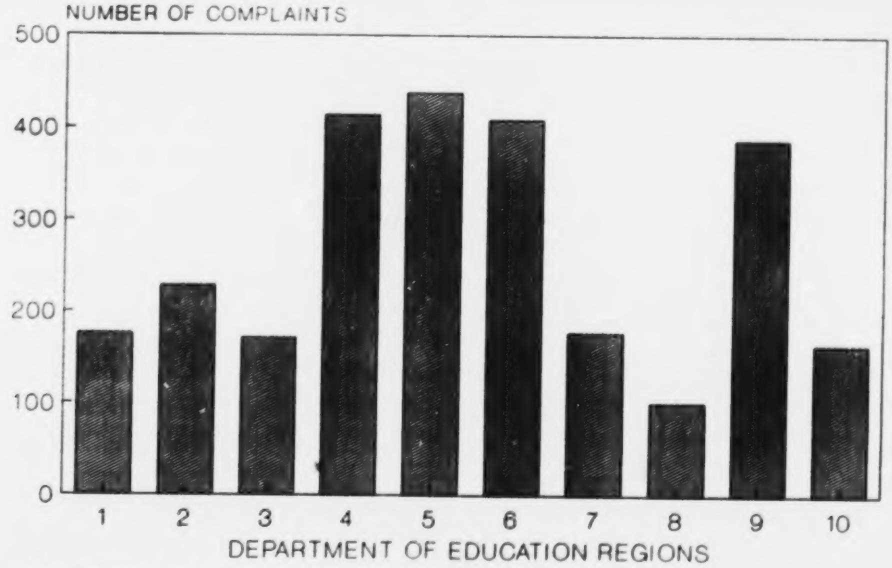
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 10-A
COMPLAINTS CLOSED BY WITHDRAWAL OF COMPLAINT--FY 1981-FY 1988 (5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 10-B
COMPLAINTS CLOSED BY WITHDRAWAL OF COMPLAINT--FY1981-FY1988 (5/6/88 ONLY)



SOURCE: DEPARTMENT OF EDUCATION DATA

TABLE 11-A
TOTAL COMPLAINTS, COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME, AND COMPLAINTS WITHDRAWN
FY 1984-FY 1987

REGION	TOTAL COMPLAINTS	COMPLAINTS MISSING A TIME FRAME	COMPLAINTS WITHDRAWN
1	686	116	89
2	1056	103	115
3	1315	264	98
4	2228	279	264
5	1807	118	239
6	1306	121	259
7	1151	141	99
8	352	7	43
9	1864	154	210
10	588	55	77
TOTAL	12353	1358	1493

NOTE: THE TOTAL COMPLAINTS COLUMN PROVIDES THE SUM OF THE NUMBER PENDING AT THE START OF EACH FISCAL YEAR AND THE NUMBER RECEIVED DURING THE FISCAL YEAR. AS A RESULT, THIS TOTAL MEASURES THE CUMULATIVE NUMBER OF COMPLAINTS HANDLED ANNUALLY. IT IS NOT AN UNDUPLICATED COUNT OF COMPLAINTS (PENDING REQUESTS WILL HAVE BEEN COUNTED AT LEAST ONCE PREVIOUSLY). SIMILARLY, THE TOTAL NUMBER OF COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME IS BASED ON ANNUAL COUNTS OF SUCH COMPLAINTS. IT ALSO IS NOT AN UNDUPLICATED COUNT (COMPLAINTS MAY MISS TIME FRAMES IN MORE THAN ONE FISCAL YEAR AND SO BE COUNTED MORE THAN ONCE).

SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

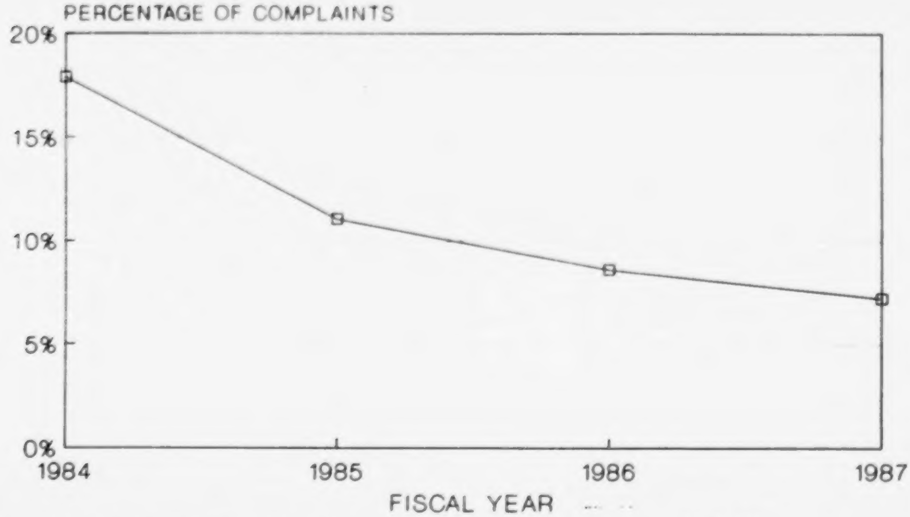
TABLE 11-B
PERCENTAGE OF TOTAL COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME OR WITHDRAWN
FY 1984-FY 1987

REGION	PERCENTAGE OF COMPLAINTS MISSING A TIME FRAME	PERCENT OF COMPLAINTS WITHDRAWN
1	16.9%	13.0%
2	9.8%	10.9%
3	20.1%	7.5%
4	12.5%	11.8%
5	6.5%	13.2%
6	9.3%	19.8%
7	12.3%	8.6%
8	2.0%	12.2%
9	8.3%	11.3%
10	9.4%	13.1%
TOTAL	11.0%	12.1%

NOTE: TOTAL COMPLAINTS IS THE SUM OF THE NUMBER PENDING AT THE START OF EACH FISCAL YEAR AND THE NUMBER RECEIVED DURING THE FISCAL YEAR. AS A RESULT, THIS TOTAL MEASURES THE CUMULATIVE NUMBER OF COMPLAINTS HANDLED ANNUALLY. IT IS NOT AN UNDUPLICATED COUNT OF COMPLAINTS (PENDING REQUESTS WILL HAVE BEEN COUNTED AT LEAST ONCE PREVIOUSLY). SIMILARLY, THE TOTAL NUMBER OF COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME IS BASED ON ANNUAL COUNTS OF SUCH COMPLAINTS. IT ALSO IS NOT AN UNDUPLICATED COUNT (COMPLAINTS MAY MISS TIME FRAMES IN MORE THAN ONE FISCAL YEAR AND SO BE COUNTED MORE THAN ONCE).

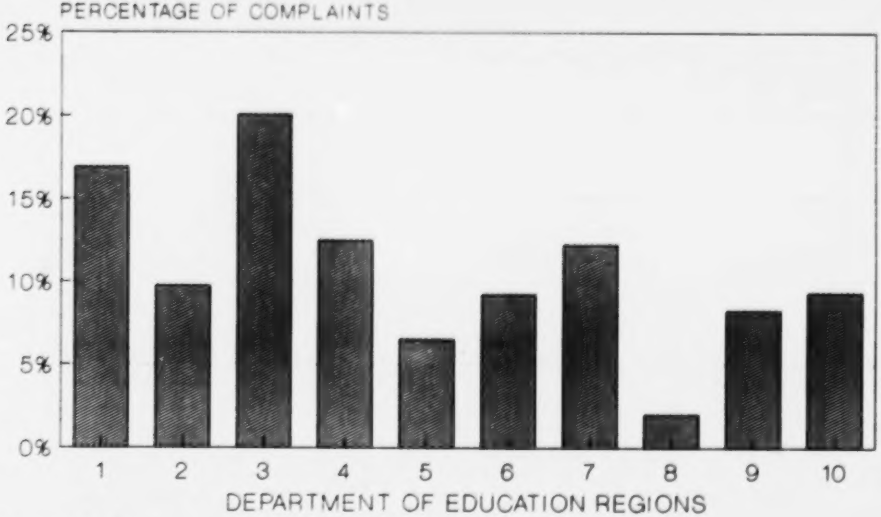
SOURCE: DATA PROVIDED BY THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS.

FIGURE 11-A
PERCENTAGE OF COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME--FY84-FY87



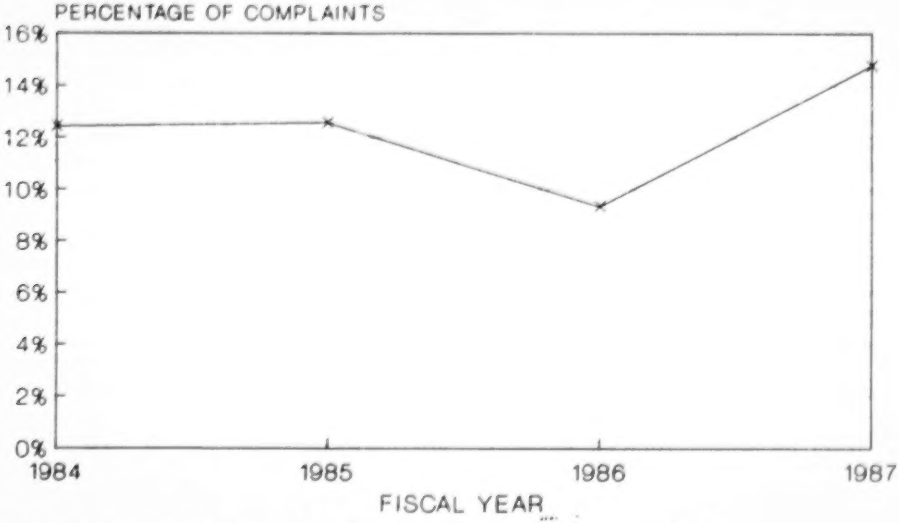
NOTE: COMPLAINT BASE IS NUMBER PENDING AT YEAR'S START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 11-B
PERCENTAGE OF COMPLAINTS MISSING AT LEAST ONE ADAMS TIME FRAME--FY84-FY87



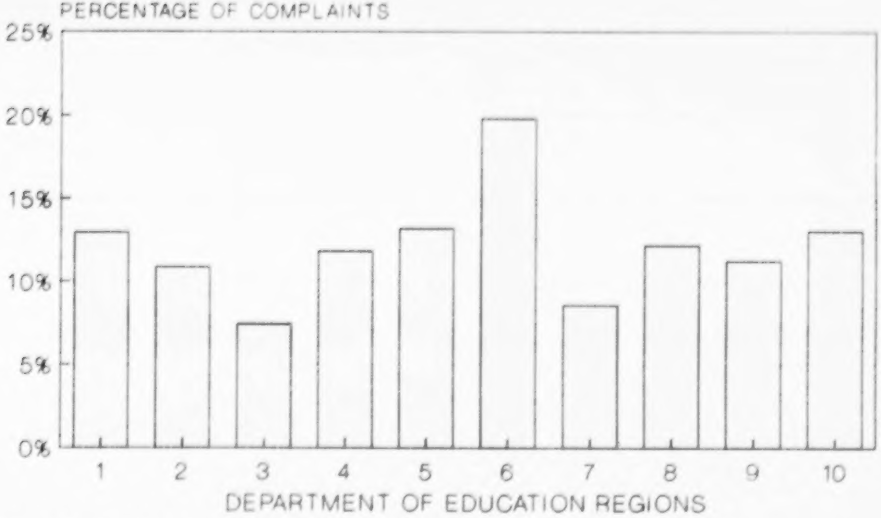
NOTE: COMPLAINT BASE IS NUMBER PENDING
AT YEARS' START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA.

FIGURE 11-C
PERCENTAGE OF COMPLAINTS WITHDRAWN BY COMPLAINANT--FY84-FY87



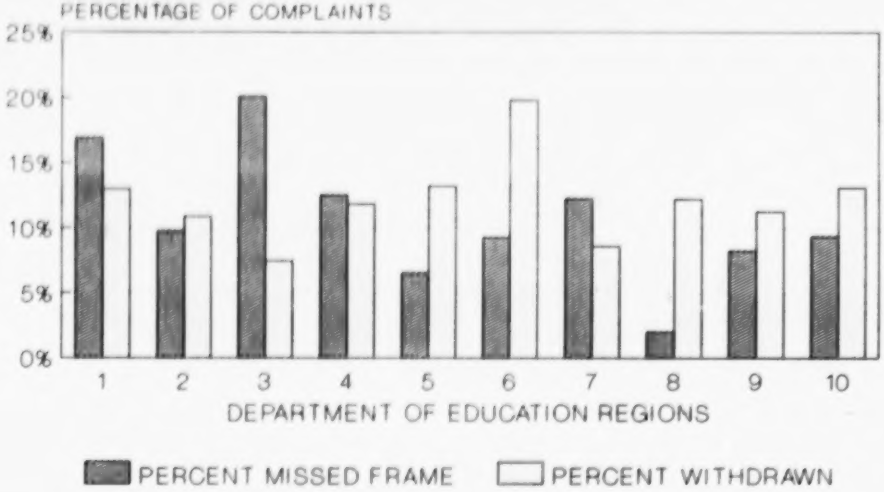
NOTE: COMPLAINT BASE IS NUMBER PENDING
AT YEAR'S START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 11-D
PERCENTAGE OF COMPLAINTS WITHDRAWN BY COMPLAINANT--FY84-FY87



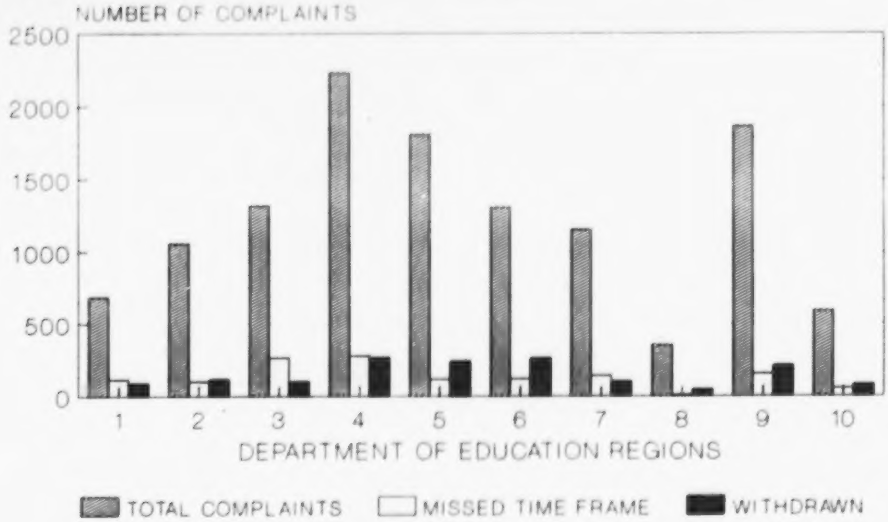
NOTE: COMPLAINT BASE IS SUM OF PENDING AT YEARS' START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 11-E
COMPLAINTS MISSING AT LEAST ONE TIME FRAME AND COMPLAINTS WITHDRAWN--FY84-87



NOTE: COMPLAINT BASE IS NUMBER PENDING
AT YEARS' START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA

FIGURE 11-F
COMPLAINTS BY REGION--FY84-FY87

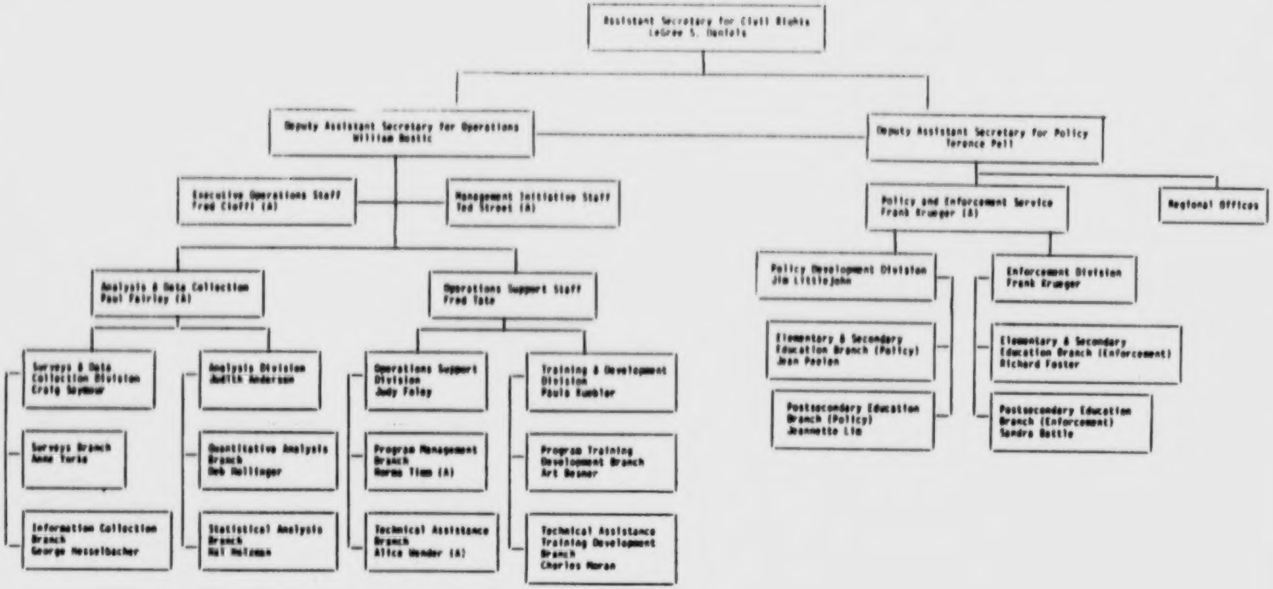


NOTE: TOTAL COMPLAINTS IS NUMBER PENDING AT YEARS' START PLUS ANNUAL RECEIPTS
SOURCE: DEPARTMENT OF EDUCATION DATA

APPENDIX B

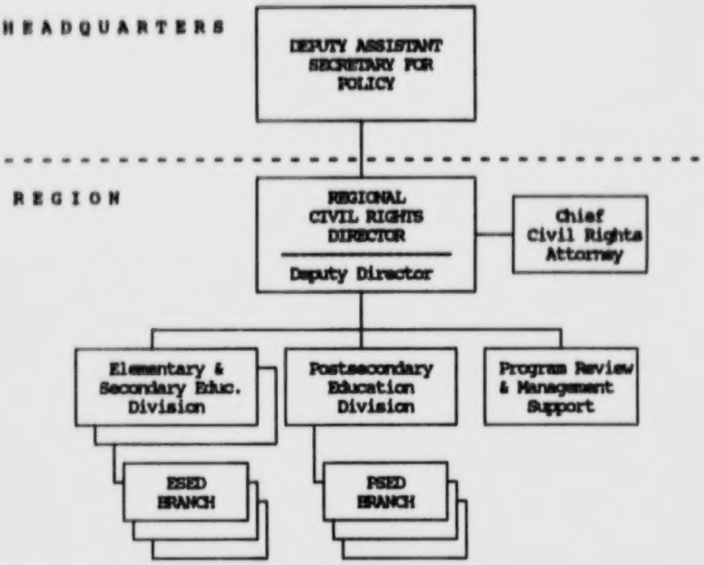
OCR ORGANIZATION

SOURCE: OCR, 1988


Assistant Secretary for Civil Rights
LeGree S. Daniels
Deputy Assistant Secretary for Operations
William Bostic
Executive Operations Staff
Fred Cioffi (A)
Management Initiative Staff
Ted Street (A)
Analysis & Data Collection
Paul Fairley (A)
Operations Support Staff
Fred Tate
Surveys & Data Collection Division
Craig Seymour
Surveys Branch
Anne Yorke
Information Collection Branch
George Hesselbacher
Analysis Division
Judith Anderson
Quantitative Analysis Branch
Deb Hollinger
Statistical Analysis Branch
Hal Holzman
Operations Support Division
Judy Foley
Program Management Branch
Norma Tims (A)
Technical Assistance Branch
Alice Wender (A)
Training & Development Division
Paula Kuebler
Program Training Development Branch
Art Besner
Technical Assistance Training Development Branch
Charles Moran
Deputy Assistant Secretary for Policy
Terence Pell
Policy and Enforcement Service
Frank Krueger (A)
Regional Offices
Policy Development Division
Jim Littlejohn
Elementary & Secondary Education Branch (Policy)
Jean Peelen
Postsecondary Education Branch (Policy)
Jeannette Lim
Enforcement Division
Frank Krueger
Elementary & Secondary Education Branch (Enforcement)
Richard Foster
Postsecondary Education Branch (Enforcement)
Sandra Battle

Attachment 4

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
Typical Regional Office Organization


HEADQUARTERS
DEPUTY ASSISTANT SECRETARY FOR POLICY
REGION
REGIONAL CIVIL RIGHTS DIRECTOR
Deputy Director
Chief Civil Rights Attorney
Elementary & Secondary Educ. Division
Postsecondary Education Division
Program Review & Management Support
ESED BRANCH
PSED BRANCH

NOTE: This organization is presented as a "typical" regional structure. Variations occur due to differences in workload. For instance, only the largest regions have multiple Elementary and Secondary Education Divisions, while the smallest regions do not have separate Elementary & Secondary and Postsecondary Education Divisions, being organized with a single Compliance Division, instead.

APPENDIX C

GLOSSARY OF TERMS

SOURCE: OCR, 1988

L. GLOSSARY OF ACRONYMS

AOP	Annual Operating Plan - Planning document in which OCR sets out the work to be accomplished in a given fiscal year.
ASCR	Assistant Secretary for Civil Rights
BNA CCH	Bureau of National Affairs; Commerce Clearing House - Both publish a biweekly publication on Equal Employment law which provides current, authoritative coverage on court decisions, administrative interpretations, new and revised regulations, and other news.
CFR	Code of Federal Regulations - A compilation of the rules issued by Federal agencies to implement the laws they administer. The Code is divided into 50 Titles and each Title is further divided into Parts and Sections. For example, regulations issued by ED implementing Title VI, Title IX, and Title VII and VIII of the Public Health Service Act are found in 34 CFR.
ED	U.S. Department of Education
EEOC	Equal Employment Opportunity Commission - The Federal agency which administers Title VII of the 1964 Civil Rights Act dealing with employment discrimination. There are many instances of the EEOC having overlapping jurisdiction with ASCR in employment discrimination cases.
EHLR	Education of the Handicapped Law Reporter-A Resource for policy guidance and court orders.
EOS	Equal Opportunity Specialist
ESAA	Emergency School Aid Act - Authorized financial assistance to eliminate minority group segregation and discrimination. (Now a part of CHAPTER II, block grants)
MALDEF	Mexican American Legal Defense and Education Fund - A party to the Adams case.
NAACP	National Association for the Advancement of Colored People. Principal organization representing the plaintiffs in the Adams case.
NOW	National Organization for Women
PEER	Project on Equal Educational Rights - An organization funded by NOW's Legal Defense Education Fund to monitor ED's enforcement of Title IX.
POC	Principal Operating Component - The program agencies in the Department of Education.
WEAL	Women's Equity Action League - One of the parties to the Adams case.

M. GENERAL USAGE TERMS

ADAMS ORDER--Originally *Adams v. Richardson*, now *Adams* v. *Bennett* -- A Court Order requiring OCR to eliminate its backlog of complaints against educational institutions within specified time frames. The Order is the result of a suit against HEW first filed in 1970 by NAACP for failure to implement Title VI of the Civil Rights Act of 1964.

ADMINISTRATIVE CLOSURE--The process of closing a case without a full investigation. This usually occurs when the complainant withdraws the complaint, the complainant cannot be located or does not respond to OCR inquiries, or when a settlement has been reached as a result of pre-LOF negotiations. Regional OCR Directors may exercise this authority.

REMEDIAL ACTION--In administering a program with respect to which the recipient has discriminated against persons on the ground of race, color, national origin, sex, handicap or age, the recipient must take remedial action to overcome the effects of prior discrimination.

ALLEGATION--An assertion, usually in a complaint, that someone did something illegal. Its validity must be proved or supported with evidence.

AUTHORIZED REPRESENTATIVE--One who has been given permission by the victim of an alleged discrimination act to file a complaint on his/her behalf.

BASE FILE--The OCR file containing the original complaint, originals of all subsequent incoming correspondence, and official file copies of all outgoing correspondence.

CLASS ACTION or CLASS COMPLAINT--A complaint in which the complainant alleges discrimination against a group of persons, all of whom share a common grievance and a common characteristic.

COMPLAINANT CONFERENCE--The final pre-on-site conference between OCR and the complainant.

CONCLUSION--A judgment or decision reached after deliberation. For our purposes this is the end result of the process of analyzing all information obtained in an investigation to determine the validity of an allegation.

DAMAGES--Relief for past injuries, most recognized as monetary payments.

GENERAL USAGE TERMS

DATA--Information organized for analysis or as a basis for a decision. Term is used interchangeably with "information." "Quantifiable" data are those types of data which form the basis for statistical analysis.

DEMOGRAPHIC STATISTICS--Population figures. They are used to show disparities in the population of the covered group and the majority group in areas relevant to an OCR investigation. Demographic statistics may be used to support a case, but cannot prove a case by themselves.

DISCRIMINATION--Denial of rights, services, benefits or opportunities to a person or group of persons resulting from actions or policies which may be intentional or inadvertent on the basis of race, color, national origin, age, sex and/or handicap.

ENFORCEMENT--Procedure leading to and the conduct of an administrative hearing. A hearing is called for when time limits for negotiation are reached, and an impasse is reached between OCR and recipient. Hearings are a submission of the disputed facts for resolution by higher authority. Both parties have the right to appeal to the Federal courts.

EVIDENCE--The data on which a judgment or conclusion may be based, or by which proof or probability may be established. For our purposes evidence shows that particular facts have been established, and not merely that testimony or documents were offered to prove a point.

EXIT CONFERENCE--Conferences conducted separately with complainant and recipient at the end of the on-site investigation.

FACT--Something known with certainty as distinguished from allegation, opinion, hearsay.

FREEDOM OF INFORMATION ACT (FOIA)--An Act of the Congress that generally requires each Federal agency to make all official records available upon written request to the public to the maximum extent consistent with the need to protect the rights of individuals.

GRANT--A monetary gift. For OCR's purposes, the act of funding a university or school district by which the Federal Government establishes jurisdiction under Title VI, Title IX, Section 504, and the Age Discrimination Act Grants may be of any size and for either general or specific purpose.

INFERENTIAL STATISTICS--See "Demographic Statistics."

INJURY--Harm done to an individual or group.

INTAKE--The initial steps taken following delivery of a complaint to OCR. Includes such actions as date stamping, establishing the filing date and entering the complaint into the system.

GENERAL USAGE TERMS

INTERROGATORIES--Formal questions, in writing, submitted to witnesses in an investigation, to be answered in writing by them.

INTERVIEW--For these purposes, any oral conversation the investigator has with any person, either personally or by telephone, pursuant to a complaint investigation.

INVESTIGATIVE PLAN--A written document prepared by the investigator to assure that all possible avenues of investigation have been considered, that the approaches to be used in the investigation are legally correct, and that the investigation will proceed logically and efficiently.

INVESTIGATIVE REPORT--A detailed narrative outlining complainant's allegations, recipient's responses, data collected, OCR's assessment of that data and OCR's conclusions concerning each allegation. It is an internal document.

ISSUE--A detailed statement which states the essential question raised by the allegation of discrimination. Also the shorthand version of stating the question (e.g., recruitment, hiring, student financial aid, selection of cheerleaders).

JURISDICTION--Authority to investigate and resolve complaints against an institution subject to a law or statute which has been assigned to OCR for enforcement: i.e., Title VI, Title IX, etc.

LETTER OF FINDINGS--Letters to both the complainant and the recipient setting out the facts and conclusion developed through the investigation. They state whether or not the recipient is in compliance with the applicable law as decided from the results of the investigation.

NEPOTISM--The practice of hiring one's own relatives.

OPENING--CONFERENCE (WITH RECIPIENT)--The initial conference between OCR representatives and officials of the college, university, elementary or secondary school being investigated.

ORIENTATION MEETING--A meeting held with representatives of the respondent who are responsible for providing data to OCR. Usually held when an investigation will require the submission of large amounts of data. It is conducted to facilitate the gathering of the data.

PRE-LOF NEGOTIATIONS--The process of informal negotiations in which OCR and a respondent attempt to resolve a violation. The process will usually involve a meeting or series of meetings after an investigation has determined a violation.

GENERAL USAGE TERMS

PRIVACY ACT--The Privacy Act of 1974 generally prohibits the release of records that are personally identifiable (i.e., complaint files) without consent of the person to whom records pertain. It also gives an individual the right to know what data is being collected or maintained about him/her and to examine such data and request revision. Because OCR is a law enforcement agency, it was granted a partial exemption to the Privacy Act that limits complainants access to their files.

REBUTTAL--The act of refuting allegations or evidence, especially by offering opposing evidence or arguments, as in a legal case. The recipient's answer to the allegations of the complainant is referred to as rebuttal. The complainant's written challenge of the LOF in the regions is also referred to as rebuttal.

REFERRAL--The act of transferring complaints to another Federal or other governmental agency for investigation. Many referrals are made to the Civil Rights Division of the Department of Justice which has jurisdiction over institutions under Federal court orders in which the United States is a party. Others are to the EEOC, but on occasion they may be made to some other Federal agency when jurisdiction is either lacking on OCR's part or there is overlapping jurisdiction.

REMEDY--A means by which a right is enforced or the violation of a right is prevented or compensated for. A given remedy usually addresses past injuries and/or potential future injury.

REPRISAL--Retaliation by a recipient against a complainant who filed or is suspected of filing a complaint, or who otherwise acted to secure rights protected by Title VI, IX or Section 504.

SENIORITY--Precedence of position, especially priority status over others of the same rank by reason of a greater length of service.

STATISTICS--The mathematics of the collection, organization, and interpretation of numerical data. In Comparative Statistics numbers representing actual data are simply compared, e.g., 20% the school age population of Rumpus County is, by census, black. In Inferential Statistics, samples of populations are taken and characteristics about the whole population are inferred. The probabilities of correctness of those inferences can also be calculated.

GENERAL USAGE TERMS

TIMELINESS--The necessity of filing a compliant under any of the laws enforced by OCR within 180 days of the alleged discriminatory act, unless this time period is extended for good cause.

VALIDATION--The term is used by OCR to describe the procedure that tests must undergo to demonstrate their value as predictors of success. These may be vocational aptitude tests, admissions tests to universities and to graduate study, and tests given to job applicants.

WITHDRAWAL--The act by a complainant of retracting a complaint filed with OCR.

WORK FILE--The file containing copies of all correspondence in the Base File (which contains all permanent documents that are not to be removed, such as the original complaint, official file copies, etc.) The work file also contains copies of all materials gathered in the investigation. It is tabbed to facilitate the use of all material gathered in the investigation.

APPENDIX D

AND

FUNCTION STATEMENT

SOURCE: OCR, 1986

MISSION AND FUNCTION STATEMENT

OFFICE FOR CIVIL RIGHTS
U.S. DEPARTMENT OF EDUCATION
WASHINGTON, D.C.

MISSION AND FUNCTION STATEMENT
OFFICE FOR CIVIL RIGHTS

I. MISSION AND RESPONSIBILITIES

The Assistant Secretary for Civil Rights serves as the principal adviser to the Secretary on civil rights matters. In order to ensure that all persons are offered equal opportunities to be admitted and to participate in Departmentally administered programs, the Office directs, coordinates, and recommends policy for activities that are designed to:

- Administer the provisions of legislation and Departmental policy prohibiting discrimination on the basis of race, color, national origin, sex, handicap, or age.
- Coordinate information-gathering and collect and analyze data.
- Develop and recommend the adoption of regulations and policies of general applicability regarding civil rights.
- Conduct investigations and negotiations to secure voluntary compliance and conduct administrative enforcement proceedings to secure compliance with legislative and regulatory civil rights requirements.
- Conduct research and surveys on civil rights issues and on the participation of minorities, women, the aged, and handicapped persons in Federally assisted education programs.
- Assist other Departmental offices in developing and implementing plans to meet civil rights objectives.

II. ORGANIZATION

The Office for Civil Rights is under the supervision of the Assistant Secretary for Civil Rights, who reports directly to the Under Secretary and the Secretary of Education. The Assistant Secretary for Civil Rights provides overall direction, coordination, and leadership to the following major elements:

Office of the Deputy Assistant Secretary for Operations; and
Office of the Deputy Assistant Secretary for Policy.

III. ORDER OF SUCCESSION

No order of succession has been established.

IV. FUNCTIONS AND RESPONSIBILITIES

A. IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY (EC)

The Immediate Office of the Assistant Secretary provides overall policy and management direction and supervision to three Services, two Staffs, and ten Regional Offices through two Deputy Assistant Secretaries.

Serves as the principal civil rights adviser to the Secretary of Education. Provides liaison with the Office of Legislation and Public Affairs for civil rights issues. Coordinates civil rights contacts with other Federal agencies.

B. OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR OPERATIONS (ECC)

The Deputy Assistant Secretary for Operations reports directly to the Assistant Secretary. The Deputy Assistant Secretary is responsible for the coordination and direction of the following major elements:

Analysis and Data Collection Service; and
Operations Support Service.

In addition, two staff components, the Administrative Services Staff and the Management Improvement Initiatives Staff, report to the Deputy Assistant Secretary. The Office of the Deputy Assistant Secretary oversees the maintenance of the OCR law library.

Administrative Services Staff (ECC-1)

The Administrative Services Staff plans, develops, implements and coordinates OCR's financial management program and maintains internal correspondence controls.

The Staff is divided into two units:

Budget and Fiscal Planning Unit; and
Correspondence Control Unit.

The Correspondence Control Unit Chief reports to a member of the Deputy Assistant Secretary for Operations' (DASO) staff. The Budget and Fiscal Planning Unit Chief reports directly to the DASO.

Budget and Fiscal Planning Unit (ECC-11)

In performing its responsibilities, the Unit:

- In coordination with Departmental budget staff and other OCR components, formulates and implements OCR's fiscal program, salary and expenses, and ADP budgets including preparation of budget requests in formats specified by ED's Office of Planning, Budget and Evaluation and the Office of Management; and the Office of Management and Budget.
- Prepares briefing materials, testimony and justifications for presentation at Congressional hearings on budget requests and responds to Congressional inquiries on budget related issues.
- Designs and executes OCR's annual financial operating plan and budget control system. Monitors budget executing plans and ensures control and reprogramming, when appropriate, of allocated funds.

- Analyzes OCR budget needs and recommends appropriate program and management improvements which could be achieved through changes in expenditure levels or patterns.
- In coordination with other OCR components, develops overall organizational long-range planning initiatives.
- Reviews and analyzes all plans required of OCR (contract plans, ADP plans, etc.) to ensure consistency with OCR goals, initiatives, and budgetary objectives.
- In coordination with other OCR components, develops and recommends annual contracting strategy to assure proper and systematic allocation of contracting funds.
- Prepares proposals and recommendations regarding methods/actions for improving out-year accomplishment of organizational, operational, and budgetary objectives and goals.
- Monitors and maintains records on expenditures.

Correspondence Control Unit (ECC-13)

In performing its responsibilities, the Unit:

- Establishes, implements, and monitors procedures for ensuring that OCR furnishes complete and timely responses to information requests from the Secretary, Under Secretary, Department of Education components, Congress, governmental agencies, and the public.
- In conjunction with the Assistant Secretary, assigns responsibility for the preparation of documents and assigns their completion dates.
- Determines internal clearance procedures for documents and correspondence, ensuring clearance and necessary coordination with other Department of Education components, and ensuring timeliness and adequacy of response.

Management Improvement Initiatives Staff (ECC-14)

The Management Improvement Initiatives Staff is responsible for reviewing and analyzing the effectiveness and efficiency of OCR's management practices, systems, procedures, and projects related to management and productivity improvement and conducts studies related to operational problems, work processes and procedures, cost effectiveness, internal control, and productivity.

In performing its responsibilities, the Staff:

- Identifies major problems and issues affecting existing or proposed management improvement policies and practices and provides briefing materials and issue papers, as appropriate, to reflect OCR's goals and priorities.

- Serves as the OCR focal point for reviewing current and proposed legislation and regulations related to management improvement programs/operations and makes recommendations regarding the impact on the economy and efficiency in the administration of these programs and operations or the prevention and detection of waste, fraud, and abuse.

- Proposes macro and micro strategies for OCR management improvements. Identifies management goals toward which OCR should be moving. Suggests application of modern technologies which can move OCR toward improved management practices.

- Serves as troubleshooter on significant management problems. Mediates disputes on sensitive management issues at the mid-management level. Consults on management issues for purposes of improving efficiency and productivity of operations. Reports to the Deputy Assistant Secretary for Operations on the status and implications of major management problems.

- Proposes approaches, designs, techniques, and points of emphasis for reports on Departmental management matters being prepared for OMB, OPM, and GAO. As directed, is involved in the implementation of these reports.

- Serves as OCR's representative on panels and committees concerned with planning, coordinating, and monitoring initiatives of special interest to the Deputy Assistant Secretary for Operations. Ensures cooperative efforts, coordinates resources, and provides guidance and direction to committee members. Serves as OCR's representative on Departmental committees concerned with management improvement, productivity improvement, and Reform '88.

- Through diagnostic reviews, determines the nature and scope of basic management problems and determines the particular project and services needed to develop solutions to these problems. Identifies appropriate staff for project and service teams.

- In the area of management systems development: plans and conducts short- and long-term studies to evaluate management effectiveness and efficiency and recommend improvements; provides technical assistance in implementing recommendations and conducts follow-up reviews to determine the effectiveness of revised procedures; and conducts analytical studies of management problems to identify and recommend areas for productivity improvements through new management technology and practicies.

- Provides technical assistance in the implementation of management improvements in program areas identified through such means as internal control reviews, GAO reports, and management studies.

- Identifies useful management practices and communicates these practices to OCR Senior Staff through the Deputy Assistant Secretary for Operations.
- Provides advice to OCR Senior Staff, through the Deputy Assistant Secretary for Operations, on organizations, functions, responsibilities, and relationships.
- Plans and conducts independent studies of OCR organizational components, and recommends changes in structure to increase effectiveness and efficiency and to meet the Assistant Secretary's goals.
- Designs and implements the process for meeting OCR's internal control responsibilities in conjunction with the Department's Management Improvement Service.
- Prepares reports on OCR's internal control system status (vulnerability assessment conducted by Senior Staff), including the Annual Report to the Congress required by the Federal Managers Financial Integrity Act of 1982.

Analysis and Data Collection Service (ECCA)

The Analysis and Data Collection Service is responsible for developing and monitoring OCR information systems and conducting comprehensive analyses of OCR compliance activities and technical assistance efforts; the Service designs and implements information systems for the collection of management information; develops and implements a system for ensuring that management information data are collected on a timely and accurate basis; designs and analyzes civil rights surveys; develops and implements a system for the dissemination of civil rights survey data to the Regional Offices and other OCR components; provides statistical support services and statistical policy guidance to Regional Offices and other OCR components; conducts special management and research studies and makes programmatic and management recommendations to the Assistant Secretary.

The Service is under the direction of a Director who reports to the Deputy Assistant Secretary for Operations. The Director provides overall support and direction to two divisions:

Surveys and Data Collection Division; and
Analysis Division.

Surveys and Data Collection Division (ECCA1)

The Surveys and Data Collection Division designs and implements management information systems that collect comprehensive data on all program operations; develops and implements a system to ensure that data is collected on a timely and accurate basis; retrieves data in the form needed for comprehensive reports and analyses and forwards the data to the Analysis Division; disseminates management information data to Regional Offices and other OCR components; provides automated data processing services to OCR; designs and conducts surveys of education institutions; develops and implements a system so that

Regional Offices and other OCR components can directly access survey data; disseminates survey data to recipients and other Federal agencies.

The Division is divided into two Branches:

Information Systems Branch; and
Surveys Branch.

Surveys Branch (ECCA11)

In performing its responsibilities, the Branch:

- Designs, conducts, and analyzes the results of surveys of education institutions to identify discrimination.
- Provides data for targeting reviews, policy development, planning, enforcement monitoring and litigation.
- Assists the Analysis Division in the development of a targeting system for compliance reviews and technical assistance.
- Prepares and maintains data files of elementary and secondary school districts, vocational education schools, institutions of higher education, and special purpose facilities for the handicapped for reports and statistical analysis.
- Develops systems to ensure timely data dissemination to Regional Offices and Headquarters components.
- Develops and disseminates data to recipients and other Federal agencies.
- Develops statement of work and all documents in the procurement package in accordance with ED procurement regulations and in coordination with the Grants and Contracts Service.
- Assists the contract specialist in activities leading to the award of contracts.
- Monitors and directs contractor performance, reviews deliverables, completes technical review of all contract expenditures, and determines whether proposed costs are reasonable and should be paid.

Information Systems Branch (ECAA12)

In performing its responsibilities, the Branch:

- Designs and implements complex systems for the collection of management information data.
- Monitors data collection for all management information systems to ensure that data are available on a timely basis.

- Serves as liaison with appropriate Departmental staff for the provision of automated data services to OCR.
- Develops and implements a system for monitoring the accuracy of data entered into OCR management information systems.
- Develops reporting formats, in consultation with other OCR components, for the retrieval of data needed for comprehensive and special reports and analyses.
- Develops complex reports in response to Adams v. Bell reporting requirements.
- Responds to ad hoc requests for management information data.
- Provides routine tracking of all cases submitted to Headquarters for the Enforcement Activities Report.

Analysis Division (ECCA2)

The Analysis Division is responsible for the conduct of management and program related macro analyses and the provision of a full range of statistical and methodological services, compliance related and general, and analyses to the Assistant Secretary and OCR.

The Division is divided into two Branches:

Quantitative Analysis Branch; and
Statistical Services Branch.

Quantitative Analysis Branch (ECCA21)

In performing its responsibilities, the Branch:

- Conducts comprehensive management analyses using compliance activity, technical assistance, quality assurance, work measurement, productivity, staff allocation, and Adams time frames compliance data.
- Conducts special analyses of OCR compliance and technical assistance activities.
- Evaluates ongoing compliance activities and new agency initiatives for effectiveness relating to stated goals of such activities.
- Prepares a quarterly management report covering major management and program issues from a quantitative perspective.

Statistical Services Branch (ECCA22)

In performing its responsibilities, the Branch:

- Conducts research and evaluation studies to assess the impact of OCR programs as recipients and beneficiaries.
- Provides statistical and methodological direction and support to Regional Offices and other OCR components.
- Develops statistical and methodological policy guidance for compliance activities in coordination with the Policy and Enforcement Service.
- Determines whether use of data and statistics is sufficient for compliance determinations.
- Analyzes survey data to determine long range effects of civil rights policies.
- Develops targeting systems, using survey and other data, for compliance reviews and technical assistance.

Operations Support Service (ECCS)

The Operations Support Service oversees OCR's program operation activities. The Service is responsible for OCR's planning efforts, technical assistance, and training programs, and provides all personnel liaison and management support to other OCR components. The Service develops, coordinates, implements, and monitors OCR program planning efforts; coordinates MBO systems; assists the Regional Offices in the development of a technical assistance program on targeted issues for selected recipients; maintains a communications network between Regional Offices and Headquarters; develops and implements training programs for civil rights compliance and technical assistance activities; and develops and monitors intradepartmental technical assistance. In addition, the Service provides a number of program support services and liaison with the Department including: organizational development; development of directives; delegations of authority; procurement and contract processing; travel; personnel liaison and support; coordination of merit pay and general performance appraisal system; and paperwork management. The Service supports all OCR components at Headquarters and in the Regions.

The Service is under the direction of a Director who reports to the Deputy Assistant Secretary for Operations. The office provides overall direction and coordination to two Divisions:

Operations Support Division; and
Training Division.

Operations Support Division (ECCS1)

The Division develops, coordinates, implements and monitors OCR's planning efforts, including the Annual Operating Plan (AOP); coordinates MBO systems; assists Regions in the developing and coordinating a program to build State agencies' capacity to support civil rights compliance; develops and monitors a program of intradepartmental technical assistance; serves as Regional liaison on program planning matters; and serves as liaison with the Office of Management on a full range of management services to OCR components.

The Division is divided into three Branches:

Program Management Branch;
Technical Assistance Branch; and
Management Services Branch.

Program Management Branch (ECS511)

In performing its responsibilities, the Branch:

- Develops, coordinates, implements, and monitors program planning efforts, reports, and documents, including the Annual Operating Plan (AOP) and the Annual Report to Congress.
- Assists Regional Offices in planning and scheduling compliance reviews consistent with the objectives of the AOP, court-ordered requirements, and other planning efforts.
- Serves as Regional liaison on program planning matters.
- Coordinates program planning activities with OCR's Administrative Services Staff and Analysis Division.
- Assists Regional Offices in obtaining the necessary investigative resources to conduct effective and timely complaint investigations and compliance reviews and to provide technical assistance.
- Coordinates the development, revision and tracking of MBO systems; and manages the process of integrating MBOs into merit pay activities.

Technical Assistance Branch (ECS512)

In performing its responsibilities, the Branch:

- Develops, coordinates, and monitors a program of intradepartmental technical assistance.
- Assists the Regional Offices in developing and coordinating a program to build State agencies capacity to support civil rights compliance.
- Assists Regional Offices in the provision of technical assistance to educational institutions, State and local governments, and other groups.
- Monitors intradepartmental memoranda of understanding covering the civil rights responsibilities of other Departmental components, and serves as OCR's liaison, as requested, with other government agencies on technical assistance matters.

- Monitors Regional review of State methods of administration to achieve compliance with civil rights statutes.
- Develops technical assistance projects with educational membership associations.
- Provides information to the Analysis and Data Collection Service toward the accomplishment of its technical assistance related activities.

Management Services Branch (ECCS13)

In performing its responsibilities, the Branch:

- In coordination with Departmental personnel staff, reviews all requests for personnel actions for adherence with applicable policies and procedures. Functions as liaison with OM's Personnel Resource Management Service and Regional personnel liaisons. Advises and assists managers, supervisors, and employees on personnel policies and procedures. Coordinates positions classification and the staffing and selection process.
- Conducts internal analyses and develops, implements, and coordinates procedures to assure adherence to all Departmental standard operating procedures in the areas of staff resources, labor relations, organization, travel, procurement, space, contracts, facilities management, telecommunications, equipment purchase and usage, property controls, paperwork and records management, and other administrative areas.
- Manages staffing allocation and controls position ceilings. Develops and recommends internal personnel policies, programs, and procedures to meet current and long-range OCR needs.
- Initiates and implements organizational changes and delegations of authority in coordination with the Office of Management. Reviews authorities delegated by the Department and by statute to OCR officials and recommends and prepares redelegations where appropriate.
- Administers OCR's General Performance Appraisal System.
- Prepares OCR comments on proposed administrative regulations, procedures, and directives. Assesses the impact they will have on OCR Headquarters and Regional Offices. Provides advice and counsel to OCR management and employees on Departmental administrative policies and procedures.
- Coordinates employee development training activities with the Horace Mann Learning Center.

- Processes timecards, paychecks, and award nominations and functions as liaison with appropriate Departmental staff offices on the applications of rules, regulations, and policies governing within-grade increases, awards, overtime, and other employee benefits.

- Reviews, for the Assistant Secretary and Deputy Assistant Secretaries, employee grievances, analyzes findings and recommendations of grievance examiners, and recommends whether to grant the relief requested. Develops proposals to accept, modify, or reject the examiner's recommendations and prepares necessary documents to implement final grievance decisions. Provides OCR staff with technical advice and assistance on grievance system.

- Acts as principal liaison with the Department's Labor Relations Staff and advises Assistant Secretary on labor-management issues. In conjunction with Labor Relations and the Union, coordinates negotiations on all staff-related matters.

- In coordination with Departmental staff, develops proposals to implement the Secretary's mandate to reduce fraud, waste, and abuse of Government resources in the areas of procurement, contracts, personnel, travel, facilities management and telecommunications.

- Initiates, reviews, and approves all OCR procurement requests. Functions as liaison with Department's Office of Management in interpreting and applying Federal procurement process. Advises OCR management and employees on policies and procedures for procurement.

- Coordinates OCR contracts and acts as liaison with Department's Office of Management. In coordination with the Grants and Contracts Service staff, establishes and monitors the annual schedule of contract activities in OCR.

- Monitors processing of requests for contract payments by OCR project officers under the Department's prompt payment procedures.

- Initiates, reviews, and approves all OCR procurement requests. Functions as liaison with the Office of Management in interpreting and applying Federal procurement process. Advises OCR management and employees on policies and procedures for procurement. Monitors processing of procurement requests.

- Establishes property inventory and accounting systems compatible with Department policy for OCR functions, equipment, and supplies.

- Coordinates internal moves and telecommunications planning and implementation. Acts as liaison with Department and GSA on building management, facilities, and safety problems.

- Manages space, phones, furniture, equipment, supplies, and records. Assesses organizational needs, develops standards for internal allocation, and recommends redistribution or purchase of additional space/equipment, when necessary.

- Reviews travel orders, evaluates special services requested, validity of travel, and compliance with travel regulations. Reviews requests for reimbursement of travel and similar costs to assure compliance with regulations. Advises OCR employees on travel regulations.

- Supervises OCR Headquarters central mail, supply, and reproduction facility; sorts and distributes mail throughout Headquarters. Maintains Central telecopier and photocopying services. Arranges for printing and publications services.

Training Development Division (ECCS2)

The Training Development Division develops and provides courses and guidance materials for the provision of training to OCR professional staff engaged in civil rights compliance activities; develops and provides courses and materials for the provision of technical assistance training to educational institutions, State and local governments, and other groups; assesses OCR program training and technical assistance needs; and monitors effectiveness of training provided. As needed, brings in noninvestigative staff to assist in the training:

The Division is divided into two Branches:

Program Training Development Branch; and
Technical Assistance Training Development Branch.

Program Training Development Branch (ECCS21)

In performing its responsibilities, the Branch:

- With the assistance of the Policy and Enforcement Service, develops training courses and guidance materials for OCR professional staff engaged in civil rights compliance activities.

- Delivers training to Regional and Headquarters staff on the conduct of complaint investigations and compliance reviews, encompassing all requisite substantive knowledge and skills.

- Continuously assesses needs and updates training materials and courses to ensure consistency with OCR policy and regulations and to reflect changing needs; and monitors effectiveness of the training provided.

Technical Assistance Training Development Branch (ECC522)

In performing its responsibilities, the Branch:

- With the assistance of the Policy and Enforcement Service, develops guidance materials and courses for the provision of technical assistance training to educational institutions, State and local governments, and other groups.

- Provides materials and courses to Regional Offices for the provision of technical assistance training to educational institutions, State and local governments, and other groups; conducts training for OCR Regional staff in the use of technical assistance training materials; and, as appropriate, assists the Regional staff in the delivery of technical assistance training to beneficiaries and recipients of the Department of Education funds.

- Continuously assesses needs and updates training materials and courses to ensure consistency with OCR policy and regulations and to reflect changing needs; and monitors effectiveness of training provided.

- Develops and monitors technical assistance contracts.

- Coordinates with the Technical Assistance Branch on the development of materials relating to intradepartmental technical assistance.

C. OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR POLICY (ECE)

The Deputy Assistant Secretary for Policy reports directly to the Assistant Secretary. The Deputy Assistant Secretary is responsible for the coordination and direction of the following major elements:

Policy and Enforcement Service; and
Regional Offices.

Policy and Enforcement Service (ECEE)

The Policy and Enforcement Service provides legal and policy support to the Assistant Secretary and to the Office for Civil Rights. The Service directs policy development and policy-related research; develops legal standards and guidelines for OCR's compliance and enforcement activities; provides legal and policy guidance and services to the Regional Offices and other components of OCR; provides legal assistance on the policy implications of legislative proposals, regulations, procedures, and guidelines submitted to the Assistant Secretary for review and/or approval; recommends cases for enforcement; directs the litigation of cases in administrative hearings; designs and implements a system to disseminate materials to the Regional Offices and other OCR components summarizing and explaining OCR policy and regulations and related legal concepts and case law. Processes appeals of regional determinations of compliance or noncompliance.

The Service is under the supervision of a Director who reports to the Deputy Assistant Secretary for Policy. The office provides overall direction and coordination to two divisions:

Policy Development Division.
Enforcement Division; and

Policy Development Division (ECEE1)

The Policy Development Division develops regulations, guidelines, legal standards, and policies pertaining to civil rights compliance, the conduct of complaint investigations and compliance reviews, and the provision of technical assistance; identifies areas in which the development of legal standards and policies are needed; conducts research to support legal standards and policy development; reviews other government regulations and proposed legislation that may affect OCR's regulations and enforcement activities; approves training and legal and policy standards; prepares and disseminates materials to the Regional Offices and other OCR components summarizing and explaining OCR policy and regulations and related legal concepts and case law; systematically reviews existing regulations and policy for relevancy, continued validity and burden on recipients of Federal financial assistance; develops memoranda of understanding with other government components regarding technical assistance and policy coordination.

The Division is divided into two Branches:

Elementary and Secondary Education Branch (ECEE11); and
Postsecondary Education Branch (ECCEE12).

Both Branches perform the same functions for their respective program areas. Specific functions include:

- Develops regulations, guidelines, legal standards and policies pertaining to civil rights compliance, the conduct of complaint investigations and compliance reviews and the provision of technical assistance.
- Identifies areas in which the development of legal standards and policies is needed.
- Conducts research to support legal standards and policy development.
- Approves technical assistance materials for conformance with established legal and policy standards.
- Reviews the Department's and other agencies' regulations and proposed legislation that may affect OCR's regulations and enforcement activities and to ensure conformance with civil rights requirements.

- Develops memoranda of understanding with other governmental agencies covering intradepartmental technical assistance and policy coordination.
- Prepares and disseminates policy guidance materials to the Regional Offices and other OCR components summarizing and explaining OCR policy and regulations and related legal concepts and case law.
- Codifies OCR findings and policy decisions in a format that can be easily referenced by regional investigators and attorneys.
- Maintains library of OCR letters of findings and policy decisions.
- Assists the Operations Support Service in the development of training materials and reviews those materials for conformance with established legal and policy standards.

Enforcement Division (ECEE2)

The Enforcement Division is responsible for the coordination of all administrative litigation within the Department of Education seeking to enforce the civil rights laws and regulations over which OCR has responsibility and represents OCR in legal consultation with the Office of the General Counsel and the Department of Justice, in matters relating to judicial litigation in Federal and state courts; the Division provides legal guidance on matters concerning specific investigations and cases referred for enforcement; reviews cases submitted to headquarters prior to findings of noncompliance and enforcement cases for legal sufficiency and adherence to established policies and procedures.

The Division is divided into two Branches:

Elementary and Secondary Education Branch (ECEE21); and
Postsecondary Education Branch (ECEE22).

Both branches perform the same functions for their respective program areas. Specific functions include:

- Reviews cases prior to findings of noncompliance and enforcement cases for legal sufficiency and conformance with established policies and procedures.
- Prepares and reviews motions, briefs, pleadings, and other legal documents on case-related matters.
- Serves as liaison to the Office of the General Counsel and the Department of Justice on case-related matters.

- Provides support for administrative proceedings and Federal court litigation.
- Assists regional legal staff in interpreting legal standards and regulations and in applying established policy to ensure consistency of application.
- Processes appeals of regional determinations of compliance or noncompliance.

Regional Offices (ECDI-ECDX)

The Office for Civil Rights has ten Regional Offices, each under the supervision of a Regional Director. Each Regional Office has the same general organizational structure and performs the same functions.

The Office of the Regional Director is responsible for directing the operations of the Regional Office to meet OCR program objectives, including management of its staff and financial resources. The Office implements the civil rights statutes and regulations for which compliance reviews; provides legal support to Regional staff; negotiates and resolves sensitive civil rights issues with high legal officials; recommends cases for enforcement; provides assistance to help recipients correct noncompliance; engages in Early Complaint Resolutions; and implements a technical assistance program at the State and local levels to promote understanding of civil rights legal responsibilities.

The Office also prepares and implements the Regional budget and the Regional portion of the Annual Operating Plan and provides input on civil rights issues and supporting services to other Regional components.

The Office implements an effective communications program with key Federal, State, local, and private civil rights officials, organizations, and the general public; and recruits, selects and trains employees. The Office participates in Headquarters policy, procedure, and program development.

The Regional Director reports directly to the Deputy Assistant Secretary for Policy. Overall direction and coordination may be provided to two divisions and two staffs:

Elementary and Secondary Education Division;
Postsecondary Education Division;
Program Review and Management Support Staff; and
Civil Rights Attorneys Staff.

Overall direction and coordination may also be provided to one division and two staffs:

Compliance Division;
Program Review and Management Support Staff; and

Civil Rights Attorneys Staff.

Elementary and Secondary Education Division (ECDIE-ECDIX)

In performing its responsibilities, the Elementary and Secondary Education Division:

- Conducts complaint investigations and compliance reviews of preschool, elementary and secondary institutions, and vocational technical schools.
- Determines compliance status of recipients and negotiates voluntary compliance or recommends cases for enforcement action. Provides assistance to recipients as part of the complaint investigation and compliance review process.
- Monitors implementation or remedial action plans.
- Represents the Regional Office in promoting understanding of OCR responsibilities and compliance programs.
- Responds to requests for technical assistance on civil rights requirements to beneficiaries and recipients of Department of Education funds. This is done through on-site visits, public speaking engagements, training workshops, conferences and meetings, responding to requests for materials and publications, and responding to inquiries.
- Participates annually in the identification and setting of technical assistance priorities to be addressed by OCR in the next fiscal year.
- With other Regional Office components, advises and assists recipients to resolve issues identified during complaint investigations and compliance reviews.

Elementary and Secondary Education Branches*

The number of Elementary and Secondary Education branches (also applicable to Postsecondary branches) under a division in each Region is determined by a combination of factors such as, but not limited to, the staff allocation, the intensity of the workload, and the feasibility/manageability of handling investigations, reviews, and geographic distribution. In performing its responsibilities, each branch under the Division:

- Conducts complaint investigations and compliance reviews of preschool, elementary and secondary institutions, and vocational technical schools.

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*/ Administrative codes for the Regional organizations below the Division level and for the Compliance Division are not listed due to the divergence of organization in various Regions. Presented here are generic functional statements for an OCR Regional Office.

- Recommends findings regarding the compliance status of recipients.
- Negotiates for voluntary compliance.
- Recommends cases for enforcement action when appropriate.
- Delivers technical assistance in coordination with the Technical Assistance Staff.
- Provides assistance to recipients.
- Monitors implementation of remedial action plans.

Each division has a Staff or a Coordinator responsible for the delivery and coordination of technical assistance. Variation will occur from Region to Region, depending on the workload and the requirements of the *Adams v. Bell* decision. In Regions where there is more than one division, the technical assistance function may reside in one or more divisions.

Postsecondary Education Division (ECD1P-ECD3P)

The Postsecondary Education Division conducts the same general functions as the Elementary and Secondary Division except that functions are related to institutions of postsecondary education and vocational rehabilitation agencies and providers.

Postsecondary Education Branches

The Postsecondary Education Branches conduct the same general functions as the Elementary and Secondary Education Branches except that functions are related to institutions of postsecondary education and vocational rehabilitation agencies and providers.

Compliance Division

The Compliance Division combines the functions of the Postsecondary Education Division and the Elementary and Secondary Education Division. The Division has a Coordinator responsible for the delivery and coordination of technical assistance.

Compliance Branches

The Compliance Branches conduct the same general functions as the Elementary and Secondary Education Branches and the Postsecondary Education Branches. The number of branches depend on staffing and workload.

Program Review and Management Support Staff

Under the supervision of a Director, the Program Review and Management Support Staff:

- Analyzes, prepares, and provides the Regional Director with information and advice concerning the meeting of OCR program and operations objectives, the number of compliance activities completed, and adherence to OCR compliance decisions and policies.
- Coordinates the development and implementation of the Annual Operating Plan of the Regional Director.
- Conducts Regional data collections and analyzes and monitors the completion of compliance actions within established time frames.
- Provides essential management and administrative services related to the analysis of budget planning, personnel, reproduction, space and supply acquisition and utilization, maintenance, correspondence control, safety, and travel.
- Assesses and assists in meeting training needs.
- Performs complaint intake, including determination of jurisdiction and completeness. Determination of jurisdiction and completeness may involve field activities. Participates in the nomination process for compliance reviews. At the discretion of the Regional Director, initiates the Early Complaint Resolution process and performs investigative and compliance review field activities.
- Provides Regional input to the OCR management information system.
- Provides liaison with Headquarters quality assurance functions including follow-up and monitoring.
- Assists the Regional Director in the implementation of Collective Bargaining Agreement and Labor Relations.

Civil Rights Attorneys Staff

Under the direction of the Regional Director, the Chief Regional Attorney and subordinate legal staff serve as legal counsel on legal and policy issues of high visibility and delicacy and provide legal guidance, advice, and support to the Regional Office. The Civil Rights Attorneys Staff provides final legal case review and reviews for legal sufficiency cases and other matters resolved regionally or submitted by the Region to Headquarters. The Civil Rights Attorneys Staff participates in the analysis of factual information and evaluates the weight and sufficiency of evidence to formulate the Department's position. The Civil Rights Attorneys Staff researches extremely complex questions of statutory and regulatory interpretation, develops legal theories and lines of argumentation to support Departmental findings, designs and implements strategies for negotiations, provides final legal review of settlement offers, and prepares case resolution agreements. The Staff formulates arguments for litigation, prepares final administrative enforcement recommendations to the Regional Director, and represents the Department in administrative proceedings and Federal courts in coordination with the Policy and Enforcement Service.

In performing its responsibilities, the Civil Rights Attorneys Staff:

- Renders legal determinations of OCR's jurisdiction over complaints, provides legal guidance in the development of investigative plans, and offers suggestions regarding the investigative approach to guide the collection of evidence. Participates in the development of investigative reports, letters of findings, and negotiated settlements and provides legal approval of the determinations of compliance status of recipients based on analyses of the evidence, legal research, and application of statutes, regulations, and policies.

- Conducts research and analysis and prepares legal opinions and recommendations to the Regional Director on novel legal policy issues which may have national impact and applicability.

- Serves as legal counsel in administrative and judicial proceedings and performs all normal litigatory tasks and functions in conjunction with the Policy and Enforcement Service.

- Researches and analyzes State and local agency statutes, regulations, and rules where conflicts exist with laws and regulations enforced by OCR and recommends to local and State officials amendatory language, new provisions or approaches for implementation of State and local statutes, regulations, and rules.

- Provides legal representation for OCR in meetings with the highest officials and their legal representatives of State and local governments and major educational institutions. Where appropriate, assumes the lead in conducting negotiations with recipients to obtain voluntary compliance with civil rights statutes and regulations.

- In coordination with the Operations Support Service, prepares and presents training to investigators, supervisors, and attorneys on complex statutory and regulatory standards, case law, and policy decisions.

- As requested by the Regional Director, provides advice and assistance to Regional components on all legal matters, including the application of the Privacy Act and the Freedom of Information Act and novel and difficulty issues of civil rights technical assistance.

V. PRIMARY DELEGATIONS OF AUTHORITY

The Secretary has delegated the following authorities to the Assistant Secretary for Civil Rights, subject to certain reservations:

A. Active Authorities

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq*.

- Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §1681 *et seq.*
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794.
- The Age Discrimination Act, 42 U.S.C. §1601 *et seq.*
- Section 606 of the Education of the Handicapped Act, 20 U.S.C. §1405

B. Repealed Authority

The following authority has been legislatively repealed but the Principal Office retains program authority in relation to any close-out or audit activity.

- Section 606 (c) of the Elementary and Secondary Education Act, as amended, 20 U.S.C. §3191 *et seq.*

APPENDIX E

LETTERS OF FINDINGS
SUBMITTED TO HEADQUARTERS, 1987-1988

SOURCE: OCR, 1988

In response to your request, we have provided all data available to OCR. We have included a printout of the data in the Headquarters Accountability Tracking System (HATS) from FY 1981 to the present. We have also included charts of the data collected manually by staff for fiscal year 1987 and to date in 1988. You will note that the data in the two systems do not agree. We believe the data on the charts to be reliable and caution against reliance on the data provided in the HATS printouts.

CHART I provides the number of draft LOFs submitted to headquarters on EAR, by region and by basis, for the time that the manual records have been kept.

CHART II shows the disposition of the draft LOFs submitted on EAR. Please note that OCR obtained voluntary settlement in the vast majority of LOFs sent to headquarters for approval. These settlements corrected all outstanding violations and therefore no further enforcement action was necessary. Of the ten LOFs returned to the regions, headquarters approved further enforcement action in seven cases. To ensure that the Letters of Findings were fully supported by the evidence and accurately reflected current policy, these letters were reviewed for a period generally exceeding 180 days. As you requested, for those cases which were returned to the regional office, we have provided a list which includes the date that the draft LOF was returned.

You also requested a list of the draft LOFs currently before the Secretary of Education (I,c,5). OCR notifies the Secretary in an EAR report of the LOFs which it intends to release. As of June 15, 1988, there are no unreleased LOFs on EAR reports to the Secretary.

CHART I

The number of draft violation LOFs which were submitted to headquarters on EAR by fiscal year, region, and basis.

FY1987

REGIONO	TOTAL CASES	SECTION 504 CASES	TITLE IX CASES	TITLE VI CASES
I	0	0	0	0
II	0	0	0	0
III	25	24	2	2
IV	4	2	2	0
V	1	1	0	0
VI	0	0	0	0
VII	38	36	4	1
VIII	2	2	0	0
IX	2	2	0	0
X	1	1	0	0
TOTAL	73	68	8	3

FY1988

REGION	TOTAL CASES	SECTION 504 CASES	TITLE IX CASES	TITLE VI CASES
I	0	0	0	0
II	0	0	0	0
III	11	10	1	0
IV	2	1	0	1
V	2	2	0	0
VI	1	0	0	1
VII	21	19	2	0
VIII	2	2	0	0
IX	0	0	0	0
X	0	0	0	0
TOTAL	39	34	3	2

The number of cases by jurisdiction may exceed the total number of cases for a fiscal year because some cases contain allegations in more than one jurisdcition.

FY 1988 is through June 15, 1989.

CHART II

Disposition of draft LOFs submitted on EAR by region and disposition, for the same period of time covered in CHART I.

REGION	APPROVED	DISAPPROVED	OPEN	VIOLATION CORRECTED
I	0	0	0	0
II	0	0	0	0
III	4	1	4	27
IV	1	0	3	2
V	0	0	1	2
VI	0	0	1	0
VII	0	1	0	58
VIII	0	0	2	2
IX	2	0	0	1
X	0	1	0	0
TOTAL	7	3	11	92

The 11 "open" cases are currently under review by headquarters.

(There are a total of 113 cases accounted for on CHART II, but only 112 cases accounted for on CHART I, because one case approved on CHART II was received during FY 1985.)

APPENDIX F

TRAINING PROGRAMS OFFERED BY OCR

SOURCE: OCR, 1988

Training programs offered by the OCR national office since 1981
(excluding courses offered at the Denver Training Center

Course Name, (Duration), and Dates	Offered To:	Number of Participants
* Basic Complaint Investigation (1 week) Jan 78 - Mar 82	OCR regions	500 (est.)
Basic Complaint Investigation (1 week) June 86	Region III	15
* Equal Employment Opportunity (12 sessions) April - July 84	OCR HQ and regions	142
* Introductory and Advanced Microcomputer Training (with HMLC*) Apr 84 - Feb 85	OCR HQ and regions	88
* Legal Reasoning (21 5-day sessions) May 84 - Aug 85	OCR HQ and regions	374
* Electronic Mail (six 2-day sessions) June - July 84	OCR HQ and regions	36
* Negotiation Training (16 5-day sessions) Jan 85 - Nov 87	OCR regions	323
* Freedom of Information Act (3 days) Feb 85	OCR HQ and regions	31
* Title IX Employment Issues (1 day) Spring 85	OCR HQ	75
* Title IX Employment Issues (three 3 day sessions) Spring 85	OCR regions	90
* _Lau_ Training Workshop (three 3 day sessions) Apr - May 85	OCR regions	48

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* _HMLC_ = Department of Education's Horace Mann Learning Center

Course Name, (Duration), and Dates	Offered To:	Number of Participants
° Magnet Schools (90 min. conf. call) June 85	OCR regions	
° Sexual Harassment (3 days) July 85	OCR HQ and regions	15
° Voc Ed Methods of Administration (1 week) August 85	OCR regions	31
° Administrative Litigation (2 half-day sessions) Sept 85 and Dec 87	OCR HQ and region attys.	38
° Preparation of Forms for Travel and Training (2 half-day sessions) Dec 85 and Jan 86	OCR HQ support staff	27
° Correspondence Procedures (2 half-day sessions) December 85	OCR HQ support staff	21
° Civil Rights Seminar May 86	OCR HQ, Policy Dev. Div.	20
° Legal Research (5 half-day sessions) June 86	OCR HQ, PES, non-attys.	13
° Technical Assistance Techniques (one week) Aug 87 - Jan 88	Regions I, II, IV, V, VII, VIII, IX, and X	122
° Writing Memoranda and Reports (3 half-days) May 88	OCR HQ	15
° WordPerfect PC Applications (one week) Apr - May 88	OCR HQ	48

The Denver Training Institute

1. The Denver Training Institute was established in December 1977 primarily to train an unusually large number of new staff hired in response to court order. It continued to operate after the establishment of the Department of Education in May 1980. OCR closed the facility on March 1, 1982, after determining that the facility was no longer the most effective means of meeting training needs. This was based largely on completion of investigative training courses by the large number of investigators hired after 1978. The cost of travel and staff time away from the field offices thus no longer justified maintaining this facility.

2. The courses offered at the Denver Training Institute included the following:

   Basic Complaint Investigation
   Special Purpose Schools
   Student Discipline
   Interviewing Techniques
   Within School Discrimination
   Special Education
   Report and Letter Writing
   Data Sources and Analysis
   Vocational Education
   Employment
   Title VI Overview
   Title IX Overview
   Section 504 Overview
   Age Discrimination Act Overview
   Emergency School Aid Act

3. Concerning the number of persons trained, our records indicate:

   - during calendar year 1980 - 30 training sessions were presented for 906 training incidences

   - during FY 1981 - 20 training sessions were presented to 627 OCR participants

   - during FY 1982 - 10 training sessions were presented to 219 OCR participants

4. OCR has no information on file reflecting the cost of training in the Denver Training Institute.

APPENDIX G

OCR REGIONAL STAFFING DATA

SOURCE: OCR, 1988

Please state for each fiscal year between 1979 and 1987 the number of field enforcement FTEs authorized per region.

The work measurement system does not provide FTE data. It does provide, since FY 1984, the number of nonsupervisory EOS's and attorneys with positions of record in each region's program divisions during the second week of each month. Staff detailed to other positions are included.

FISCAL YEAR	REGION I	II	III	IV	V	VI	VII	VIII	IX	X
FY 1984										
Average	20	47	47	62	55	51	28	13	42	17
Sept. 1984	19	45	47	60	56	50	29	15	43	17
FY 1985										
Average	22	44	44	60	61	47	28	13	50	18
Sept. 1985	21	43	45	62	60	47	26	14	47	16
FY 1986										
Average	20	41	44	62	55	45	23	15	45	15
Sept. 1986	19	39	42	55	54	42	23	15	44	15
FY 1987										
Average	17	32	41	52	51	41	23	14	43	15
Sept. 1987	18	28	40	51	49	39	23	15	40	16

Please indicate the current ratio of professional staff to clericals in the regional offices and in the National office.

Ratio of Professional to Clerical
Full-Time Permanent (FTP) Staff
On Board as of 4-23-88

Component	On-Board FTP Staff		Ratio of Professional to Clerical
	Prof.	Cler.	
Headquarters			
	141	39	3.6 to 1
Regions			
I	34	7	4.9 to 1
II	39	12	3.3 to 1
III	58	12	4.8 to 1
IV	78	17	4.6 to 1
V	72	14	5.1 to 1
VI	59	13	4.5 to 1
VII	36	10	3.6 to 1
VIII	24	6	4.0 to 1
IX	53	6	8.8 to 1
X	26	7	3.7 to 1
Total Regions	479	104	4.6 to 1

Prof. = Professional
Cler. = Clerical

APPENDIX H

OCR REGIONAL OFFICE COMPUTERS

SOURCE: OCR, 1988

Item VI, f

REGIONAL OFFICE PERSONAL COMPUTERS

1981-1987, 1988

The list below provides the numbers of personal computers placed in OCR's regional offices during Fiscal Years (FY) 1981-1987 and those placed there during FY 1988 (through May). (Note: PC is used to refer to the IBM PC; XT pc for the IBM PC-XT, and AT for the IBM PC-AT.)

Region	1981-1987	1988
I	1 XT 8 Compaqs	1 AT compatible
II	1 XT	4 AT compatibles
III	1 XT 6 PCs	4 AT compatibles
IV	1 XT	4 AT compatibles
V	1 XT	16 AT compatibles*
XV	1 XT	4 AT compatibles*
VI	1 XT	4 AT compatibles
VII	1 XT	4 AT compatibles
VIII	1 XT	3 AT compatibles
IX	1 XT	4 AT compatibles
X	1 XT	3 AT compatibles

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*Region V (including XV) is the regional site conducting an office automation pilot project using personal computers with WordPerfect software.

APPENDIX I

IMPORTANT COMMUNICATIONS CITED IN TEXT

Legal Defense Fund

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC
99 Hudson Street, New York, N.Y. 10013 • (212) 219-1900

806 Fifteenth Street, N.W., Suite 940
Washington, D.C. 20005 • (202) 638-3278

April 4, 1988

Mrs. LeGree Daniels
Assistant Secretary for Civil
Rights
Department of Education
Switzer Building
Room 5000
Third & C Streets, S.W.
Washington, D.C. 20202

Dear Mrs. Daniels:

At the meeting in your office on March 3, 1988, you asked for my recommendations on how the Office for Civil Rights could more effectively enforce the civil rights laws under your jurisdiction. I am happy to comply with your request.

Before turning to specific issues, permit me to make two observations about the March 3rd meeting. Since you and I have established a good working relationship, you have on several occasions asked me for my advice. And because I know you are genuinely interested in making a difference in civil rights, I am confident that you will not take these remarks as criticism of you personally.

You and your staff should not be spending time carrying out the Secretary's school improvement agenda. The Secretary has other people in the Department to implement his agenda. Your job is to enforce the statutes through investigations, findings, negotiations to achieve voluntary compliance and referral to administrative law judges or to the Department of Justice when recipients fail to come into compliance. Rather, you should be giving direction to your staff on policy and procedures for enforcing the laws under the jurisdiction of the Office for Civil Rights.

You must disabuse your staff of the notion that enforcement of Title VI somehow improperly interferes with educational decisions made by local school officials made in the best interests of children. That sentiment, which I heard expressed in several different ways that the purpose of Title VI is simply the "mixing of bodies" and beyond that has little or no impact, is a complete perversion of the statute. OCR does not make national policy or decisions. OCR determines whether or not educational policy or practice violates Title VI, Title IX and Section 504 as they have been interpreted by the federal courts and by the Congress.

Let me now turn to my specific recommendations. I shall address first Title VI enforcement issues and second predicates to effective enforcement of all three statutes.

Title VI Enforcement Issues

1. The Supreme Court has held that proof of discriminatory effect is sufficient to establish a violation of Title VI regulations. *Guardians Association v. Civil Service Commission of City of New York*, 463 U.S. 582 (1983). OCR should immediately abandon the use of an intent standard in all Title VI determinations. Twiggs County, Georgia, Docket #04-85-1010. See Memorandum from Alicia Coro to Jessie High, May 12, 1987.

2. There are two in-school discrimination practices which Title VI, properly enforced, can correct. Racially discriminatory classroom assignment is a major barrier to providing a quality education for disadvantaged children for they are the ones most likely to be grouped in low ability tracks and in educable mentally retarded (EMR) classes. Bona fida ability grouping, even where it results in racial segregation, is not a violation of Title VI if the school district can demonstrate that its grouping practices have an educational justification. Three Regional Offices, (Four, Five and Six) do a few ability grouping compliance reviews. The number of such reviews should be increased, targeting the most rigid and egregious tracking practices as the first priority. OCR has been successful on one tracking case (Dillon #1), but there have been unconscionable delays in two other tracking cases (Dillon #2 and Mecklenberg County) because some OCR officials ar unwilling to enforce the Office's own established Title VI policy.

Much more can be accomplished on EMR, but OCR is disinclined to do so. The few reviews it does conduct are deficient. The Ninth Circuit Court of Appeals has enjoined the use of non-validated I.Q. tests employed to assign Black children to EMR classes and ordered the State of California to eliminate the disproportionate enrollment of black children in those classes. *Larry P. v. Riles*, 793 F.2d 969 (1984). The test enjoined by the District Court and the Court of Appeals in *Larry P.* was the WISC-R (the Weschsler Intelligence Scale for Children-Revised) which had not been validated for assigning black children to EMR classes. Nevertheless, OCR continues to accept school districts' use of the WISC-R for EMR assignments. See: Docket #05-86-5004, Thornton Township H.S.D. #205, LOF October 30, 1986; #05-86-5002, Evanston Township H.S.D. #202, LOF October 6, 1986; #04-86-5007 Columbus County, LOF June 4, 1987.

3. The Vocational Education Guidelines (45 CFR Part-80, Appendix B, issued March 21, 1979) have been under used. Compliance reviews of vocational education do not address some of the most significant barriers to high quality vocational training, such as site selection and admissions criteria. OCR should be doing comprehensive reviews of vocational schools and their feeder schools and state-operated schools in metropolitan areas.

4. OCR continues to abdicate its responsibility for pupil assignment issues. Your predecessor instructed Regional Offices not to select for compliance reviews districts operating under a desegregation plan, a matter about which I wrote to you on September 16, 1987. In Region IV alone, there are some 300 districts which are operating under voluntary school desegregation plans and which are under the exclusive jurisdiction of OCR. Outside the South, there are many small and medium sized districts which have undergone demographic changes. OCR should analyze the 102 survey forms overtime or contact state agencies, such the Pennsylvania Human Relations Commission, which have school enrollment data. This information could assist OCR in identifying districts with potential compliance problems which could then be scheduled for review. "Zone jumping" is another all too prevalent practice in Georgia, Alabama, and Mississippi, yet OCR never does reviews unless it receives a complaint. When white students are residing in one district but attending a school in a nearby district to escape predominantly black schools, the quality and financial base of those majority black school districts suffers.

5. Discrimination in the allocation of educational resources between minority and non-minority schools denies minority students an equal educational opportunity in violation of Title VI. OCR has never initiated a compliance review of this issue. However, in response to a complaint concerning intra-district disparities in Hartford, Connecticut, OCR actually found a Title VI violation. Docket #01-82-1069, Letter of Finding, February 27, 1984. OCR could be much more aggressive by initiating reviews of discriminatory allocation of educational resources.

6. The Department of Education and Housing and Urban Development could do joint Title VI reviews of the interrelationship between housing and school segregation. United States and Yonkers Branch of the NAACP v. Yonkers Board of Education, City of Yonkers, Yonkers Community Development Agency. Second Circuit Court of Appeals, December 28, 1987.

7. OCR has never initiated compliance reviews of examination requirements for kindergarten graduation, the high school diploma or the baccalaureate degree which result in a disproportionate failure rate of black students in a system that has not eliminated the vestiges of de jure racial segregation or in which there is unequal provision of educational resources is a violation of Title VI. Only once has OCR found a violation of Title VI on these grounds, in the case of the Georgia Regents Test. See Letter of Finding, March 7, 1984. Several states have imposed such "competency tests" including South Carolina, Mississippi (high school diploma), Georgia (promotion from kindergarten to first grade), and Florida (College Level Academic Skills Test). The imposition of such examination requirements as these, where black students are victims of remaining vestiges of de jure schools or victims of unequal educational resources, deprive them of equal educational opportunities under Title VI.

8. Mandatory course requirements for high school graduation that may have a racially adverse impact where black and other minority students attend schools that do not offer required courses or offer them only infrequently, or where the courses are taught by unaccredited teachers. This Title VI issues has received no attention within OCR. In fact, OCR has not taken the initial step of instituting recordkeeping requirements by state education departments.

9. You may have read recent news accounts concerning the dispute over where the children of homeless families in Weschester County, New York, can attend school. A high proportion of these children from New York City are minority. Schools that are predominantly white are refusing to take these children on the grounds of residency, but many believe this is a pretext for racial discrimination. I believe this is a Title VI issue. OCR should have long ago developed a policy on this matter, announced it publicly, and then initiated several compliance reviews to determine whether local and state officials were complying with Title VI. The basic deprivation, on the grounds of race and national origin, to attend public schools cries out for OCR's attention. Your agency has been silent on this issue.

10. A substantial proportion of minorities in postsecondary

education are enrolled in two-year colleges. The minority transfer rates to upper-division in four-year institutions is notoriously low. OCR should initiate reviews of community college systems to identify any barriers which deny minority access to and completion of programs and courses in these presumptively open-enrollment institutions. The establishment of separate campuses or satellite branches which have different course offerings is an example of a practice which creates segregated and unequal education within counties and metropolitan areas.

11. OCR must also take compliance action against historically white institutions which establish, or expand existing, campuses nearby historically black public colleges, thereby threatening the latter's viability.

12. Compliance reviews in the area of higher education should focus on recruitment, admissions, retention, financial aid and disciplinary policies system-wide, rather than focus on individual institutions where the segregative or disparate effect of policies and practices may be less apparent.

Predicates to Effective Title VI Enforcement

There are a number of OCR policies which currently inhibit effective enforcement of the civil rights laws. Listed here are some reforms which would restore credibility to the agency and enable it to make more effective use of its authority and resources.

1. Abolish the violation-corrected Letter of Findings (LOF) and return to the prior practice of issuing LOFs with findings of fact and conclusions of law prior to the negotiation of corrective action.

2. Develop clear, legally-supported compliance policies, train OCR staff and develop clear investigatory guidelines for implementing the policies in handling complaints and compliance reviews.

3. Provide periodic training in current legal developments for all staff but most especially the lawyers in headquarters and the regional offices. Experts in civil rights law both inside and outside the federal government could be invited to provide some of the training, as the Equal Employment Opportunity Commission has done on occasion.

4. Get good advice on remedy. OCR should seek the advice of

educational and legal experts, not only in the development of compliance policies, but also in the types of corrective action plans that would remedy violations that OCR has found. For example, in the area of ability grouping, your staff would be in a better position to evaluate the proposals of school officials.

5. Consult with and obtain advice on a regular basis from state departments of education, state civil rights agencies, local school administrators, higher education officials, civil rights organizations, and other constituent groups. Such meetings would help OCR keep abreast of developments around the country while building rapport and establishing good will with those effected by OCR's operations.

6. Data collection policies must be revamped so that the agency has the kind of information relevant to current civil rights problems. Recipients must be notified of data maintenance requirements that will facilitate OCR investigations, even though the data may not have to be reported to OCR. Too many LOFs simply declare that an allegation could not be investigated due to the absence of records. Development of data maintenance requirements should be done in consultation with representatives of recipients, such as the Committee on Evaluation and Information Systems of the Council of Chief State School Officers, in order to find the least burdensome means of providing OCR with the kinds of data it requires.

7. Public information activities concerning agency policy, types of investigations, corrective action plans, and other kinds of information in OCR's possession should be undertaken. The Media Update that was issued on January 27, 1988 about the results of the 1986 Elementary and Secondary Civil Rights Survey was the first OCR press release that I can remember in more than 10 years.

I will be pleased to develop more fully any of the recommendations I have made in this letter.

Yours truly,

Phyllis McClure

Phyllis McClure

ATTACHMENT A

RECEIVED JUL 9 1984

President
FRANK B. BROUILLET
Washington Superintendent
of Public Instruction

President-Elect
GORDON M. AMBACH
New York Commissioner
of Education

Vice President
CALVIN M. FRAZIER
Colorado Commissioner
of Education

Directors
VERNE A. DUNCAN
Oregon Superintendent
of Public Instruction

DAVID W. HORNBECK
Maryland State Superintendent
of Schools

TED SANDERS
Nevada Superintendent
of Public Instruction

WAYNE TEAGUE
Alabama Superintendent
of Education

FRANKLIN B. WALTER
Ohio Superintendent
of Public Instruction

CAROLYN WARNER
Arizona Superintendent
of Public Instruction

Executive Director
WILLIAM F. PIERCE

MEMORANDUM

TO: Thomas Burns
Office of Intergovernmental and Interagency Affairs, U.S. Department of Education

FROM: William F. Pierce
Council of Chief State School Officers

Phyllis McClure
NAACP Legal Defense and Educational Fund, Inc.

RE: Office for Civil Rights Elementary and Secondary School Civil Rights Survey (101 and 102) 1984 and proposed Vocational Education School Survey

DATE: July 2, 1984

This memorandum sets forth the joint recommendation of the Council of Chief State School Officers (CCSSO) and the NAACP Legal Defense and Education Fund, Inc. (LDF) regarding the Office for Civil Rights' (OCR) plans for conducting in 1984 both the Elementary and Secondary School Civil Rights Survey (101 and 102) and the Vocational Education School Survey (203). The memorandum is comprised of three sections. The first section is a brief explanation of the background of these surveys so that the contemporary issues may be seen in their historical perspective. The second section deals with OCR's originally announced plans for both surveys and the objections of CCSSO and LDF. The third and last section describes CCSSO's and LDF's joint recommendation to the Department for the 1984 survey and the rationale for those recommendations.

The intent of this memorandum is to set the policy framework for a Departmental decision on the conduct of the two civil rights surveys in 1984. The policy decision, however, is necessarily influenced by time.

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COUNCIL OF CHIEF STATE SCHOOL OFFICERS
379 Hall of the States, 400 North Capitol Street, N.W., Washington, D.C. 20001 • 202 393-8161

Although notice of these surveys was given by February 15, 1984 as required by the Paperwork Reduction Act, no final survey design has been approved by the Department or by the Office of Management and Budget as of the date of this memorandum. We are now just two months away from the earliest school opening in the United State and five months away from the projected reporting date of mid-November for school officials to complete the survey forms.

I. Historical Background of the OCR 101 and 102 and the OCR 103 Surveys

A. The Elementary and Secondary School Civil Rights Survey (OCR 101 and 102).

1968-1974. The OCR 101 and 102 survey was conducted annually and on a national basis from the 1967-1968 school year. During these years, Title VI of the Civil Rights Act of 1964 was the only statute enforced by OCR. In 1968, 1970, and 1972 (the "even" years survey), OCR's data collection covered approximately 8,000 school systems and 70,000 individual schools. The sample methodology was such that the larger a school district's enrollment, the higher its probability of inclusion. This assured that there was a very high coverage of minority pupils in the United States. Although these "even" year surveys did not literally cover every school district in the nation, they were statistically constructed so as to permit projections of the universe of school districts.

In the "odd" years (1969, 1971, and 1973) a smaller sample of approximately 3,000 school districts and 35,000 schools was drawn from the universe (or census) of school districts surveyed in the "even" years.

In 1974, another small survey of 3,000 school districts was conducted based on a random sample drawn from the existing universe of districts. The random sample focused on districts of "high interest" while at the same time permitting national statistical projection capability.

Two basic survey instruments were designed and remained basically the same from 1968 through 1974:

1. the School System Summary Report (101);
2. the Individual School Campus Report (102).

Once a school district was selected for the survey, every individual school in that district was covered. The 101 form provided data that was not necessarily repeated or supported by individual school data. In other words, the two forms were designed to complement each other and to provide limited verification of data.

1976. The 1976 Survey employed a much different methodology. OCR now had enforcement responsibility for Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973. In order to obtain base line data on female and disabled students, OCR had to conduct a census of every district in the country. The result was that 101 was sent to all 16,000 school systems. In addition, 3,600 districts received the 102 forms. The 3,600 districts were selected by a weighted random sample that concentrated still on "high interest" districts, yet maintained the capability of providing state-by-state and national projections.

The 1976 survey was undoubtably the most massive civil rights survey of America's schools ever conducted, and it created an enormous political furor. Every school system was asked to report data on the 101 form, and school districts and schools were asked for data by sex and handicap which the federal government had never asked for before. In the wake of strong opposition from educators and Congress, the 1976 survey was cancelled only to be approved after a change of course by the Ford Administration due to strong protests from civil rights groups. 1976 is the last year in which a census of every district was taken in one survey.

1978-1982. In this period, the 101 and 102 survey was changed from an annual to a biennial survey. The surveys conducted in 1978, 1980 and 1982 differed markedly from their predecessors in content and sampling methodology. Fewer districts were surveyed and fewer questions were asked. This reduced burden reflected a decreased need for baseline data because that information was available from the 1976 survey.

The sampling methodology for the three surveys was different from the 1976 survey. The general methodology was designed to collect data from three categories of districts over a three-survey cycle so that OCR's data needs would be satisfied and respondent burden would be reduced. But the methodology also guaranteed that over three surveys, OCR would still collect data statistically sufficient to project a universe. This scheme obviated the need to conduct a "census" survey in one year yet still gave OCR the ability to draw samples of districts from a universe. Put another way, OCR would survey every school district over 300 enrollment at least once in three cycles. It therefore had the data it needed for compliance purposes, it spread the respondent burden over three surveys in a six-year cycle, and it retained statistical control over a universe of districts from which to draw samples.

The sampling methodology used in the 1978/1980/1982 surveys covered three basic categories of districts.

Category 1 - This included 1,700 districts of "high interest" to OCR and to the Department of Justice, and these school systems were surveyed each year.

Category 2 - This represented approximately 1,700 school districts in order to obtain statistical projections (e.g., handicapped, and minority students) while providing state-level and national-level estimates of all protected groups (i.e., protected by Congressionally enacted civil rights statutes).

Category 3 - This category included the 11,550 of the 16,000 school districts whose enrollment exceeded 300. By subtracting Category 1 (1,700) and Category 2 (1,700) districts, (a total of 3,400), from 11,550 and dividing by three surveys, left an estimated 2,717 districts in Category 3 to be surveyed in each year 1978, 1980 and 1982.

The other advantage to the three-survey, six-year cycle was that it established some reliability and predictability for respondents. Some school systems knew in advance that they would have to respond to OCR's data requests every two years. Other districts with enrollments in excess of 300 knew they would be surveyed at least once in six years.

The 1978, 1980 and 1982 OCR Surveys were conducted without any incident. The 1978 survey was administered to 6,049 districts and 54,000 schools. The 1980 survey was administered to 5,000 districts and 51,000 schools. The 1982 survey was completed by 3,129 districts and 29,000 schools. A pattern had been established. OCR has had no different data needs, and in fact, has reduced and simplified data requests each year.

B. The Vocational Educational School Civil Rights Survey (OCR 203)

Pursuant to the 1973 Order in Adams v. Richardson, OCR was required to establish a compliance program for vocational institutions, including a statistical survey of such schools. A 1974 survey of approximately 1,400 area vocational schools was conducted.

Plaintiffs sought a Motion for Further Relief in Adams which ultimately resulted in the Consent Order of December 1977. A 1979 survey of 10,600 vocational education schools, including area vocational schools, comprehensive high schools and junior or community colleges was required by this Consent Order. It was the first OCR survey of these schools as providers of vocational education. Community colleges had reported data on HEGIS and comprehensive high schools had reported on the 102, but never had these institutions reported vocational-specific statistics to OCR.

II. The 1984 Elementary and Secondary School Civil Rights Survey and the Vocational Education School Civil Rights Survey.

OCR's original proposal for the 101 and 102 Survey in 1984 abandoned the survey strategy of a rolling sample of the universe of districts employed in 1978/1980/1982 and adopted a stratified random sample of districts. Sub-sampling of schools within large school systems was also proposed. The 101 survey instrument would be unchanged, but there would be modifications of the school-level form, the 102. The 1984 survey would include 3,500 school districts and approximately 21,000 schools.

OCR further propose to conduct the Vocational Education Survey in the same year based on a sample of approximately 5,000 schools drawn from three different types of institutions -- comprehensive high schools, area vocational centers and junior colleges.

The proposals would have the following major consequences:

1. There is no provision for the preservation of a sampling frame in the future. Thus after a few survey cycles, the current data (whose oldest elements date from 1978) will be out of date. OCR will therefore, have to conduct a census survey sometime in the 1980's in order to update the universe of protected class enrollment counts. We believe OCR and the Department of Education will regret the choice of the random sample design it now proposes. A nationwide survey of the universe in one year is infinitely more burdensome than spreading it over three survey cycles and, as was demonstrated in 1976, will generate great political outcry about federal paperwork.

2. Omission of the high interest districts will reduce the compliance value of the data for OCR and the Department of Justice. OCR Regional Offices will no longer have data for districts they monitor. The Department of Justice which has the court-ordered monitoring responsibilities for specific school districts will similarly lack compliance information upon which it has come to rely.

3. Sub-sampling of schools within large districts reduces the utility of the survey data and reduces the coverage of minority students at no appreciable reduction of respondent burden. The sampling of every third school in the large districts would not assure even an adequate sample of elementary (or secondary) schools, especially if it were done alphabetically. There would further be no total district counts for districts included in the stratified random sample because that information is not collected on the 101 district-level form. The nation's large school systems typically generate data by centralized computer programs designed well in advance to produce information to meet their own and the state's requirements. OCR's data requests are a small part of the total . Data are generally standardized in all schools. To ask every third school to collect different information actually causes more problems for large district administrators.

4. Changes in the questions asked on the 102, no matter how few, come much too late this year. Therefore, there is little liklihood that districts will be able to provide the data. Districts that have been included in past surveys and anticipate responding in 1984 have their data collection systems geared to collect the number of pupils disciplined, not the number of discipline incidents, as OCR proposed. The same holds true for the pupil assignment question which asks for classroom data for two grades, as opposed to the one grade formerly asked.

5. The conduct of both surveys in the same year creates an unreasonable increase in burden for the comprehensive high schools that are required to complete both the 102 and the 203.

6. The sampling strategy for the 203 is fundamentally flawed. Among many other defects, the sampling design ignores some major civil rights compliance issues in vocational education. As originally conceived, the survey would yield very little useful data for OCR.

III. The Recommendation of the Council of Chief State School Officers and the NAACP Legal Defense Educational Fund.

Our joint proposal has been set out in a letter to Secretary Bell, Margaret Webster of the Education Department, and to Joseph Lackey of the Office of Management and Budget. (See Attachements)

In essence, our proposal calls for OCR to:

1. Use the 1982 101/102 survey instrument previously approved by CEIS and OMB for the 1984 survey;

2. Use in 1984 the survey sampling design that was successfully used in 1978, 1980 and 1982;

3. Postpone the Vocational Education Survey until 1985.

The ability of state and local school systems to cooperate with OCR's data collection depends on the predictability and regularity of the survey. The six-year, three survey cycle just concluded struck an equitable balance between respondents' burden and the Department's civil rights enforcement responsibilites.

The 1982 survey forms and the previous sampling strategy have already been approved by the Division of Education Information Management, the Office of Management and Budget and the CCSSO Committee on Evaluation and Information Systems. Thus, clearance could be expedited so that the time schedule for 1984 data collection and return of the forms could still be met. Because OCR's clearance packages (SF-83) have not been approved, the use of the existing forms and prior methodology is the only feasible alternative at this late date.

OCR's principal rationale for its proposed stratified random sample is that OMB has required the Department to reduce "burden hours" for its surveys, including the 101 and 102. Yet, we have been repeatedly told by the OMB clearance officer and by officials of the Division of Education Information Management that the Department has already met its goal for "burden hour" reduction and that OCR is under no mandate to reduce "burden hours" for the 101/102 Survey. We fail to understand why OCR continues to argue that it must redesign the sample in order to comply with OMB's requirement.

As we have attempted to show, OCR's proposed surveys for 1984 would greatly increase respondent burden not only for this year but for the future.

We do not believe that either OCR or the Department has given us a full and fair hearing on this important and potentially controversial issue. A meeting with the Under Secretary would serve that purpose.

LDF Legal Defense Fund
NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
99 Hudson Street, New York, N.Y. 10013 • (212) 219-1900

806 Fifteenth Street, N.W., Suite 940
Washington, D.C. 20005 • (202) 638-3278

September 16, 1987

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DASP

Mrs. LeGree Daniels
Assistant Secretary for
Civil Rights
Department of Education
Switzer Building
Room 5000
330 C Street, S.W.
Washington, D.C. 20202

Dear Mrs. Daniels:

A July 14, 1987 memorandum from Alicia Coro to Regional Civil Rights Directors regarding guidance for the selection of sites for compliance reviews states on page six that

> Compliance reviews on issues covered by an OCR-approved corrective action plan, a desegregation plan or a Federal court order generally should not be selected.

I am perplexed and troubled by the exemption of school desegregation plans from the Office for Civil Rights' compliance reviews. Especially in the 17 Southern and Border States, there are hundreds of districts operating under desegregation plans approved by OCR. The July 14th memorandum would appear to be a total abdication of OCR's responsibility to monitor continuing compliance with a desegregation plan in non-court order districts. A desegregation plan is not, and never has been considered, a corrective action plan.

A copy of the July 14, 1986 memorandum is enclosed for your convenience. I would appreciate clarification of this matter.

Sincerely,

Phyllis McClure
Phyllis McClure

PM:vyt

Enclosure

Legal **D**efense **F**und

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
99 Hudson Street, New York, N.Y. 10013 • (212) 219-1900

806 Fifteenth Street, N.W., Suite 940
Washington, D.C. 20005 • (202) 638-3278

September 10, 1987

The Honorable Augustus Hawkins
Chairman
Committee on Education and Labor
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Hawkins:

I enclose a document which will be of interest to the Committee on Education and Labor's oversight review of the Office for Civil Rights. It is an internal memorandum setting forth the latest policy on selecting recipients for agency-initiated compliance reviews. Of particular concern to the Legal Defense Fund is the instruction on page six to "avoid" school desegregation compliance reviews. Further, compliance reviews of OCR-approved corrective action plans would be legitimate only if those plans are reviewed by other means.

The Legal Defense Fund would appreciate any information the Committee might obtain from the Office for Civil Rights about this policy.

Yours truly,

Phyllis McClure

Phyllis McClure

p.6
7-3-2

MEMORANDUM

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

TO : Regional Civil Rights Directors
Regions I - X

DATE: JUL 14 1987

FROM : Alicia Coro Alicia Coro
Acting Assistant Secretary
for Civil Rights

SUBJECT: Revised Guidance for the Selection of Sites for Compliance Review

This memorandum supersedes the guidance provided in my memorandum dated September 25, 1986, regarding the selection of sites for compliance reviews. The revised guidance is based on the recommendations made by the Compliance Review Task force, which I have approved. You should implement the attached revised directions as of the date of this memorandum. Consistent with the earlier guidance, regional offices will continue to be responsible and accountable for planning and conducting compliance reviews.

The comments you recently made to the Compliance Review Task Force regarding the compliance review site selection process were very helpful; the changes in the revised guidance are based on your comments. Briefly, the revised guidance includes a reference to Pickens and its effect on determining jurisdiction, points out that Impact Aid and Title III (Part C) confer institutionwide jurisdiction, directs that survey data be verified, and clarifies certain requirements of the 1977 Adams Order. In addition, a revised format for substantiating your compliance review site selections is attached to the revised guidance.

Also attached are samples of compliance review site selection justifications that are well thought out and thoroughly substantiated. These samples were based on the old format and should not be considered the only types of reviews you should be conducting.

I have instructed headquarters staff and the Compliance Review Task Force to provide all possible assistance to the regions in conducting your compliance review program. The procedures outlined in the revised guidance will enable OCR to continue to conduct a comprehensive compliance review program and will assist the regional offices in conducting more compliance reviews in the upcoming fiscal year.

Attachments
As stated

cc: Jim Littlejohn
Fred Tate
Paul Fairley

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Guidance for the Selection of Sites for Compliance Reviews

I. BACKGROUND

On January 17, 1985, the United States District Court for the District of Columbia ruled that the Office for Civil Rights (OCR) could carry out its civil rights responsibilities by complying with the Court's Order of December 29, 1977, as modified by certain provisions of the March 1983 Order (1977 Order). *Adams* v. *Bennett*, C.A. 3095-70. For the most part, the requirements of the 1977 Order provide only general guidance regarding compliance review issues. However, regional offices should consider the types of reviews listed in the 1977 Order at page 16 when selecting issues for compliance reviews.

The Supreme Court, in *Grove City College* v. *Bell*, 465 U.S. 555, 104 S. Ct. 1211 (1984) (*Grove City*), defines OCR's jurisdiction as covering specific programs and activities that are federally funded. The Department of Education's Reviewing Authority further delineated the program specificity requirement in the *Pickens* decision (*In the Matter of Pickens County School District*, Docket No. 84-IX-11-Civil Rights Reviewing Authority, October 25, 1985). Therefore, issues selected for compliance reviews must be related to those specific recipient programs and/or activities defined as the administrative units that further the purposes of the Federal funds.

OCR's jurisdiction over a federally funded program attaches only after the Federal funding has been received. Except in the case of construction, reconstruction, and renovation of facilities (discussed below), jurisdiction is limited to the period of the grant or loan. Federal funding for most grant programs is awarded for one year; however, some grant funds are awarded for periods of less than or more than a year. Therefore, regional offices should determine the specific time period covered by an award.

OCR's jurisdiction based on Federal construction, reconstruction, and renovation grants and loans depends on dates: When the loan or grant was awarded and when the civil rights statute in question was passed. Therefore, in all cases, OCR must determine these dates. Where a grant or loan was awarded after passage of the civil rights statute, OCR retains jurisdiction over programs using the facility for as long as the facility continues to be used for educational purposes. For loans awarded prior to passage of the civil rights statute, jurisdiction attaches as long as the loan is still being repaid. Therefore, for loans awarded prior to passage of the civil rights statute, the regional offices should determine the status of repayment.

Federal funding programs such as Student Assistance Financial Assistance (Impact Aid) and Title III (C) of the Higher Education Act provide institutionwide jurisdiction. However, the regional offices should not rely solely on inscitutionwide Federal funding. Other funding sources, such as Chapter I and Chapter II, should be considered with the appropriate analysis made to determine jurisdiction. The "admissions exception" to the program-specific requirements of *Grove City* can provide institutionwide jurisdiction over issues dealing with admissions. However, its use for asserting institutionwide jurisdiction over other issues is limited.

The regional offices should refer to the guidance memoranda provided by headquarters for determining the extent of OCR's jurisdiction over a recipient's programs and/or activities. These memoranda are included in the Policy Codification System. No site should be selected for a compliance review without documentation of appropriate current Federal funding in accordance with those memoranda. In selecting compliance review sites, regional offices should determine as early as possible whether the issues identified arise in programs or activities over which OCR has jurisdiction.

The 1987 Annual Operating Plan (AOP) does not provide, as was done in the past, a list of specific issues to which regional offices should refer in selecting sites for compliance reviews. Each regional office is responsible for identifying issues and recipients for compliance reviews where serious potential compliance problems are indicated. The compliance review cycle shall be open and consistent with the 1977 Adams Order, OCR's AOP, and this guidance.

Each regional civil rights director is responsible for his/her region's performance in conducting a compliance review program. This includes appropriate utilization of staff resources, selection, and conduct of reviews. The regional directors are authorized to select issues where there are significant potential compliance problems not addressed by this guidance, contingent upon approval by the Assistant Secretary. When selecting issues not addressed by this guidance, the regional directors should provide headquarters with the names of institutions, the scope and dates of reviews, and other pertinent information. However, headquarters generally would not approve individual reviews in advance. Also, regional directors should seek guidance when they consider particularly complex compliance reviews, or when they require assistance developing a methodology for conducting a review or determining jurisdiction.

Headquarters service directors shall ensure timeliness and quality of services they provide to support compliance reviews. For example, the Analysis and Data Collection Service should supply survey data and other pertinent information, and the Policy and Enforcement Service should respond to requests for legal and policy guidance.

The regional offices should establish review procedures for their compliance review programs to ascertain if sites were selected in accordance with this guidance and direction and if reviews were conducted properly. The Assistant Secretary may call in any or all compliance reviews for headquarters quality control reviews.

There are three standards, described in detail below, to be applied in the selection of sites for compliance reviews. They are: 1) Indicators of Compliance Problems, 2) Site Selection Considerations, and 3) Limitations on Site Selection. "Indicators" are evidentiary factors suggesting that a recipient may have a compliance problem subject to OCR's jurisdiction. "Considerations" are external factors, apart from a compliance problem, that OCR should analyze in selecting a compliance review site. These considerations are to ensure OCR's adherence to its statutory mandate to enforce the applicable laws and the requirements of the Adams Order. "Limitations" are factors that mitigate against, but do not prohibit, a site selection. This guidance does not apply to compliance reviews initiated pursuant to Methods of Administration (MOA) evaluations.

II. INDICATORS OF COMPLIANCE PROBLEMS

The regional offices may use as many indicators as are necessary to justify a compliance review. No one indicator has a higher priority than another. One indicator may be sufficient if it supports the site selection. The following indicators of compliance problems can assist regional offices in determining which sites should be selected for compliance reviews:

A. Survey Data

Federal and state data may reveal possible compliance problems of specific recipients. Relevant Federal data sources are identified in Tab A. Regional offices should obtain state-collected data by contacting the appropriate state agency. However, as a general rule, site selections should not be based primarily on survey data but should be supported by other evidence when possible.

The regional offices should verify the survey data by follow-up phone calls or visits to the recipient or other sources of survey data. The verification process should be of sufficient depth to indicate that a compliance problem may exist.

B. Regional Sources

An analysis of the number of complaints against a recipient and of the specific issues raised in the recent past (i.e., within the past three years) can signal potential compliance problems at a particular site. For example, if a region has investigated several individual complaints on the same or similar issues and has found violations, a compliance review might be warranted to determine whether the individual complaints indicate systemic compliance problems.

During complaint investigations or compliance reviews, regional staff may become aware of potential compliance problems on issues other than those under investigation. Therefore, a review of the investigative reports of recent complaints and compliance reviews may indicate the need for compliance reviews.

Recipients with a history of violations and/or a documented record of bad faith in complying with negotiated agreements may be considered for reviews. Where these reviews are under the same statute(s) where violations were previously found, they must cover uninvestigated issues. Issues covered by negotiated agreements should be monitored rather than selected for reviews. (NOTE: Unlike compliance reviews, which investigate the practices of recipients to determine their compliance with civil rights statutes and regulations, monitoring reviews determine whether, and to what extent, recipients are implementing the specific requirements of negotiated agreements, including corrective action plans.)

C. Other Potential Sources

A review of information provided by state agencies with which regional offices have a Memorandum of Understanding or information provided by state education agencies in accordance with the Methods of Administration requirements of the "Vocational Education Guidelines" may provide useful information about potential compliance problems at specific sites. In addition, community members, news media, other state and/or local agencies (particularly civil rights agencies), advocacy groups, students, faculty, professional organizations, and publications (e.g., college catalogs, Barrons) may serve as sources of information regarding alleged discriminatory treatment by a particular recipient.

III. SITE SELECTION CONSIDERATIONS

In determining which of the potential sites should be selected for compliance reviews, regional offices should consider:

A. 1) The 1977 Adams Order requirements.

OCR must conduct an appropriate number of compliance reviews to ensure adequate enforcement of the applicable civil rights laws. The Order specifically mandates compliance reviews under Title VI, Title IX and Section 504 covering a broad range of recipient practices that may constitute discriminatory action.

2) The guidance outlined in OCR's Annual Operating Plan.

B. The number in the protected classes that might benefit from corrective action if compliance problems were found at each site.

Compliance reviews of recipients with large enrollments may provide OCR the opportunity to resolve violations affecting significant numbers of beneficiaries. Such reviews also can be an efficient use of OCR staff resources. However, care should be exercised in selecting sites solely on the basis of size, since medium or smaller sites also merit review.

C. The potential "ripple effect" a successful review at a given site might have on other recipients within the state and/or region.

Factors that should be considered are: A recipient's size, whether it is part of a larger system, its reputation as a "leader" in the state/region, or whether it offers specialized education programs that few, if any, recipients offer. For example, if an institution offers the only graduate program in educational administration in a state, compliance problems in that program can affect districts throughout the state.

D. The need for a comprehensive regional compliance review program.

After potential sites have been identified and assigned priority on the basis of potential compliance problems and other factors discussed above, regional offices should strive to conduct a comprehensive compliance review program. Factors that should be considered are:

1. Statutory Scope

The regional compliance review program should include, to the extent possible, reviews of issues under each statute.

2. Educational Scope

The regional compliance review program should include reviews of both elementary and secondary and postsecondary education levels. In addition, it should include reviews of diverse educational programs at elementary and secondary schools, vocational education schools, junior/community colleges, four-year colleges, graduate schools, and professional schools, to the extent consistent with identified issues and sites. Reviews of small- and medium-sized recipients should be considered as well as sites enrolling large numbers of students. Programs at both public and private postsecondary institutions should be included.

3. Geographical Scope

The regional compliance review program should reflect, to the extent consistent with identified potential compliance problems, the geographic makeup of the region. If warranted, the program should include sites located in each state in the region. Geographic areas that appear to have significant compliance problems, areas in which there has been little prior OCR activity, rural, and urban sites should all be included where possible.

IV. LIMITATIONS ON SITE SELECTIONS

In general, regional offices should avoid selecting sites on the basis of:

A. Requests for Technical Assistance

OCR should assume that any recipient that has requested technical assistance recognizes it may not be complying with regulations and desires to eliminate possible discriminatory practices. However, although a site should not be targeted for review just because the recipient has sought technical assistance, recipients that have sought technical assistance should not be routinely excluded if indicators of specific compliance problems appear to warrant a review. For example, during an on-site visit to a postsecondary institution that has requested technical assistance in developing its policies and practices regarding sexual harasssment, OCR staff note that the College of Oceanography is housed in an inaccessible building. A compliance review may then be warranted to determine whether the oceanography program is accessible to handicapped students.

B. Existing Corrective Action Plans, Desegregation Plans or Court Orders

~~Compliance reviews on~~ issues covered by an OCR-approved corrective action plan, ~~a desegregation plan~~, or Federal court order generally ~~should not be selected~~. If warranted, however, sites under corrective action plans, desegregation plans, or Federal court orders may be selected for reviews on any issues not included in a plan or court order. The IPM is being revised to include procedures to aid the regional offices in determining compliance review site selections for affected recipients.

C. Previous Reviews

Regional offices should avoid selecting sites that have been reviewed within the past three years or selecting the same sites repeatedly unless there are specific indicators of compliance problems.

D. A Narrow or Broad Issue Scope

Regional offices should avoid selecting sites for compliance reviews on issues that are either too narrow to warrant the commitment of resources required by a review or are unnecessarily broad in scope. When the reasons for selecting a particular review site pertain to only one civil rights jurisdiction, regional offices should avoid expanding the review to several jurisdictions. Multijurisdictional reviews should be selected only when the indicators reveal potential compliance problems that fall under more than one jurisdiction. For example, the placement of students with limited-English proficiency in special education programs may indicate both Section 504 and Title VI compliance issues.

The regional director has discretion in selecting sites in the above categories for compliance reviews. If a site selected for a compliance review is in one of the categories that generally should not be selected, then the regional office should provide additional documentation supporting the selection.

V. CONCLUSION

The criteria discussed above provide the method by which regional offices are to select sites for compliance reviews. As a site selection is made, the regional office should prepare appropriate documentation to demonstrate that the method of selection for each site accords with this guidance.

A model format to be used for documenting compliance review site selections is provided at Tab B. The documentation must indicate that the selection of each site has been reviewed by the chief civil rights attorney and approved by the regional director.

A task force will be convened semiannually to review the documentation for the compliance review site selections of regional offices. The task force will be composed of regional and headquarters staff, with the Chair appointed by the Deputy Assistant Secretary for Operations (DASO). It will include one regional director, regional division directors from the program divisions, a regional chief civil rights attorney, and headquarters' representatives from the Policy and Enforcement Service, the Operations Support Service, and the Analysis and Data Collection Service. The DASO will obtain for the task force documentation of compliance reviews from each regional office and the Automated Case Information Management System (ACIMS). The documentation for the selection of review sites will be evaluated by the task force for consistency with the site selection guidance. The task force will submit its report to the DASO.

Attachments

Tab A: Relevant Federal Data Sources
Tab B: Format For Compliance Review
Site Selections

APPENDIX J

ADAMS v. BENNETT: ORIGINAL COMPLAINT (1970)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

KENNETH ADAMS, KEITH BUCKHALTER ADAMS, LINDA ADAMS, GARRY QUINCY ADAMS, LORIE ANN ADAMS, and TONY RAY ADAMS, infants, through their father, JOHN QUINCY ADAMS,
Rte. 3, Box 138
Brandon, Mississippi

HENRY AYERS and GWENDOLINE AYERS, infants, through their father, JAKE AYERS,
Glen Allan, Mississippi,

JACK R. GAUTREAUX,
3108 Desote,
New Orleans, Louisiana,

MARY FULLENKAMP,
923 Cherokee Street,
New Orleans, Louisiana,

WADDIA ANN BROWN,
1977 Laramie Street,
Memphis, Tennessee,

SANDRA LEE WRIGHT,
629#A Lauderdale Avenue South,
Memphis, Tennessee,

CASSANDRA THURMON, ETHEL MAE THURMON and TERRY MINNIFIELD THURMON, infants, through their mother, MRS. BESSIE R. THURMON,
387 Hayden,
Belzoni, Mississippi,

ELIZABETH RAY and BELINDA RAY, infants, through their mother, MRS. BERNICE RAY,
Belzoni, Mississippi,

ROBERT F. JORDAN,
401 Burton Street,
Monroe, Louisiana,

MRS. WANDA L. BROWN,
302 South 24th Street,
Monroe, Louisiana,

EURETHA LYNN WEST, infant, through her mother, MRS. MYRA WEST,
616 Robert Street,
Dyersburg, Tennessee,

STEPHANIE HALLIBURTON, infant, through her mother, MRS. IRIS HALLIBURTON,
1019 Fair Street,
Dyersburg, Tennessee,

GERALD WAYNE RAINEY, infant, through
his father, CARL RAINEY,
Route 1,
Hattiesville, Arkansas,

HELEN RUTH MOORE, infant, through her
father, JAMES EDWARD MOORE,
Route 1,
Hattiesville, Arkansas,

SOLOMON V. THOMPSON, infant, through
his father, DR. V. F. THOMPSON,
931 - 12 Street,
Newport News, Virginia,

CHARLOTTE McDANIEL, infant, through
her father, ERNEST McDANIEL,
1114 42nd Street,
Newport News, Virginia,

DIANNE YOUNG, infant, through her
mother, MRS. ORA LEE YOUNG,
501 N. Garmon Street,
Forrest City, Arkansas,

LINDA FORD, infant, through her mother,
MRS. GEORGIA LEE FORD,
723 Hodge Road,
Forrest City, Arkansas,

SHEILA FAYE THOMAS, infant, through
her mother, MRS. EDMONIA NORRIS,
3118 21st Street,
Gulfport, Mississippi,

CHESTER FAIRLEY, JR., infant, through
his mother, MRS. VERA FAIRLEY,
2003 31st Avenue,
Gulfport, Mississippi,

ALICE MOORE, infant, through her mother,
MRS. MADELYN MOORE,
2007 Wingfield Street,
Osceola, Arkansas,

LINDA LEE CODY, infant, through her
father, A. B. CODY,
Route 1, Box 219,
Osceola, Arkansas,

Student Plaintiffs,

- and -

MAURICE FINKELSTEIN,
6310 Bannockburn Drive,
Bethesda, Maryland,

MRS. VIRGINIA DeC. FRANK,
3320 N Street, N. W.
Washington, D. C.,

Taxpayer Plaintiffs,

v.

ELLIOT L. RICHARDSON, individually,
and as Secretary of the Department
of Health, Education and Welfare,
330 Independence Avenue, S.W.,
Washington, D. C.,

and

J. STANLEY POTTINGER, individually,
and as Director of the Office for
Civil Rights, Department of Health,
Education and Welfare,
330 Independence Avenue, S.W.,
Washington, D. C.,

Defendants.

Civil Action
No. 3095-70

AMENDED COMPLAINT FOR DECLARATORY AND OTHER RELIEF

JURISDICTION

1. Plaintiffs seek declaratory and other relief against defendants' default on their obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d *et seq.* (herein "Title VI"), a statutory provision which implements the Fifth Amendment to the Constitution of the United States. This action arises under Title VI; the Fifth Amendment; the Fourteenth Amendment; 5 U.S.C. §§ 702-704; 28 U.S.C. §§ 1331, 1343(4), 1361, 2201 and 2202; 42 U.S.C. §§ 1983 and 1985; D.C. Code § 11-521 (1967 ed.). The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $10,000.

PARTIES

2. Plaintiffs listed in the first group in the caption (Kenneth Adams through Linda Lee Cody) are students (suing through their parents), attending public schools and colleges which have, since the enactment of the Civil Rights Act of 1964, segregated and discriminated on the basis of race in violation of the Fourteenth Amendment of the United States Constitution and yet have continued to receive Federal financial assistance, contrary to Title VI and to the Fifth and Fourteenth Amendments of the Constitution. Plaintiffs sue on behalf of themselves and others similarly situated.

3. Plaintiffs listed in the second group in the caption (Maurice Finkelstein and Mrs. Virginia DeC. Frank) are citizens and taxpayers of the United States--suing on behalf of them-

selves and as representatives of the class of all Federal taxpayers--whose taxes are being expended by defendants by money grants to public schools and colleges which segregate and discriminate on the basis of race.

4. As to each class represented by the plaintiffs: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) plaintiffs will fairly and adequately protect the interests of the class. The defendants have acted and refused to act on grounds generally applicable to the class and appropriate relief with respect to plaintiffs will also be appropriate for the class as a whole.

5. Defendant Elliot L. Richardson is Secretary of the Department of Health, Education and Welfare and defendant J. Stanley Pottinger is Director of the Office for Civil Rights of HEW. Both defendants directly exercise HEW's responsibility for enforcement of Title VI.

THE RIGHT REQUIRING ENFORCEMENT

6. Section 601 of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d) establishes that:

> "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 602 of Title VI (42 U.S.C. §2000d-1) empowers agencies such as HEW which extend Federal financial assistance to issue rules, regulations or orders for the purpose of effectuating the rights contained in Section 601. Where voluntary compliance cannot be secured with such rules, regulations, or orders, Section 602 empowers HEW to use any means authorized by law to effectuate compliance, including specifically "termination of or refusal to grant or to continue assistance" to the segregating or discriminating institution.

7. The student plaintiffs herein, who are attending public schools and colleges engaging in unlawful segregation and discrimination on the basis of race, have a right under Section 601 of Title VI not to have Federal monies given to support such schools and colleges. Title VI was enacted by the Congress to implement fundamental Fifth and Fourteenth Amendment proscriptions of government support or aid to racial discrimination. That right is not illusory, for Congress sought by Title VI generally to encourage desegregation by those receiving Federal assistance and experience has shown that enforcement of the constitutional right implemented by Section 601 has in fact had that salutory effect. The taxpayer plaintiffs herein have a right under Section 601 and under the Fifth Amendment not to have their Federal taxes expended to support racially segregating and discriminating institutions of public education.

THE CAUSES OF ACTION HEREIN

8. In this action plaintiffs assert a variety of wilful defaults by HEW through continued assistance to public schools and colleges once segregated by law and now continuing to segregate and discriminate in practice in violation of the Fourteenth Amendment.

Of the six causes of action alleged, the first three complain of HEW's outright refusal to exercise its jurisdiction under Title VI, while the last three assert that its exercise is legally inadequate.

9. The first cause of action alleges that with respect to numerous school districts continuing to segregate though subject to judicial desegregation orders, HEW has unlawfully declined to undertake any action to secure compliance with Title VI. In their second cause of action, plaintiffs allege that HEW has refused to undertake action to secure compliance with Title VI by segregated public institutions of higher education. Plaintiffs' third cause of action complains of HEW's failure to discharge its obligation under Title VI to prevent State Departments of Education from racially discriminating in the approval and administration of programs of Federal financial assistance. The fourth cause of action alleges that even after learning that school districts have reneged upon their commitments under HEW-approved desegregation plans, HEW has continued for long periods to distribute Federal funds to such districts rather than immediately suspending all Federal payments thereto. The fifth cause of action asserts that in numerous school districts wherein HEW has found probable cause to believe that segregation and discrimination practices exist, which render the district ineligible for Federal assistance under Title VI, it has nevertheless continued for long periods of administrative proceedings to distribute Federal funds to the districts rather than immediately suspending all Federal payments thereto. In their sixth cause of action plaintiffs allege HEW's failure after a Supreme Court change or clarification of school desegregation requirements to require segre-

gated school districts immediately to conform to such change or clarification as a condition of further Federal aid.

10. Apart from their individual merits, the six causes of action are symptomatic of a general and calculated default by HEW in enforcement of Title VI since its passage in 1964. This failure to enforce Title VI and the Fifth Amendment's guarantee against Federal assistance to racial segregation and discrimination has been widespread, affecting thousands of public schools, colleges and universities across the country. Thus, although the Civil Rights Act was enacted in July 1964, the first HEW Guidelines governing compliance with Title VI by public schools did not appear until one month before the end of the 1964-1965 school term, and the first Federal funds were not cut off from even obviously segregated schools until June 1966, two years after Title VI became law. In the succeeding three years, the power to terminate Federal assistance was increasingly employed by HEW where it finally found a school district in a condition of noncompliance, but its standards for compliance were unduly lax and permissive, both with respect to the time of desegregation and the standard of desegregation itself. Moreover, in major areas elucidated in the six causes of action of this Complaint, HEW never properly undertook to exercise its Title VI jurisdiction. Finally, on July 3, 1969, HEW Secretary Robert H. Finch and Attorney General John N. Mitchell, jointly announced a new policy "(t)o minimize the number of cases in which it becomes necessary to employ the particular remedy of a cutoff of federal funds. . ." This policy statement also revoked the previous HEW Title VI deadlines of complete desegregation by the "opening of the 1968-69 or, at the latest, 1969-70 school year" (HEW Guidelines, March 1968). The July 3 statement

heralded virtually complete abandonment of HEW school aid terminations--the teeth of Title VI. In contrast to the cutoff of funds from forty-six segregated school districts between the summer of 1968 and the summer of 1969, HEW thereafter virtually ceased terminating funds to noncomplying school districts. But a single school district was terminated during the 1969-1970 school year, and only a few districts thereafter.

11. This general default by HEW has had an extraordinarily adverse impact on school desegregation efforts. HEW, charged with the preparation of school desegregation plans under Title IV of the Civil Rights Act of 1964 (42 U.S.C. §2000c-2), and the approval of such plans under Title VI, provides nationwide standards and norms to which courts and public bodies traditionally look in school desegregation cases. HEW's failure to fulfill the Title VI mandate of Congress has, therefore, caused far more harm than typical governmental inaction; it has generally reinforced and entrenched the practice of public school segregation, to the detriment of plaintiffs and others similarly situated.

FIRST CAUSE OF ACTION - COURT ORDER DISTRICTS

12. Plaintiffs Kenneth Adams, age 16, Keith Buckhalter Adams, age 16, and Linda Adams, age 14, are black students attending Pearl-McLaurin High School in the Rankin County, Mississippi school district. Plaintiffs Garry Quincy Adams, age 12, Lorie Ann Adams, age 9, and Tony Ray Adams, age 8, are black students attending Pearl-McLaurin Junior High School, Pearl Elementary School and Pearl-McLaurin Elementary School respectively, in the same district. They sue through their

father, John Quincy Adams. Plaintiffs' school system was segregated by law at the time of the Supreme Court's definitive rulings in Brown v. Board of Education, 347 U.S. 483 (1954). Following enactment of Title VI, segregation and discrimination continued to be practiced in plaintiffs' school system notwithstanding the issuance of a series of remedial court orders. Indeed, such non-compliance with Title VI led HEW on May 10, 1967 to terminate all federal funds to the Rankin County school district although such funds were quickly restored upon the issuance of a court order on November 9, 1967. Although the school district is presently subject to a court order issued on April 3, 1970 by the United States District Court for the Southern District of Mississippi requiring the desegregation of schools and the implementation of a unitary system, the school district is not obeying this court order. In violation of the order's requirement that no teachers may be demoted or dismissed on the grounds of race, the school district has demoted virtually all of its black principals on the grounds of race. Nevertheless, defendants have continued to grant Federal funds to the Rankin County school district.

13. Several schools in the Rankin County school district attended by plaintiffs are currently segregating classrooms by race. Although the April 3, 1970 order of the Federal court is inadequate in its failure to forbid such unconstitutional segregation -- and indeed fails to meet HEW's own desegregation standards of compliance with Title VI -- HEW has failed to take any steps to secure a more adequate court order, or to secure compliance with its own standards, and has continued to grant Federal funds to the segregated Rankin County school district.

14. Plaintiffs Henry Ayers, age 16, and Gwendoline Ayers, age 15, are black students attending Glen Allan School in the Western Line Consolidated School District, Mississippi. They

sue through their father, Jake Ayers. Plaintiffs' school system was segregated by law at the time of the Supreme Court's definitive rulings in Brown v. Board of Education. Following enactment of Title VI, segregation and discrimination continued to be practiced in plaintiffs' school system notwithstanding the issuance of a series of remedial court orders, but at no time since the enactment of Title VI has HEW suspended or terminated Federal aid to the district. On January 12, 1970, the United States District Court for the Northern District of Mississippi issued an order in conformity with the directive of the United States Court of Appeals for the Fifth Circuit in Singleton v. Jackson Municipal Separate School District, 419 F. 2d 1212, 1218 (1969), requiring that the ratio of black and white teachers in each school be substantially the same as the ratio of black and white teachers in the entire school district, and secondly that faculty members be hired, demoted, dismissed, etc. without regard to race. In plain violation of this court order, however, the school district has divided its teachers among the district's three schools so that white teachers are heavily concentrated in one school and the black teachers in the remaining two. In addition, the district has been refusing to hire black teachers on the basis of their race. Nevertheless, defendants have continued to grant Federal funds to such discriminating and segregating school district.

15. Although defendants have known or should have known that the public schools attended by plaintiffs segregate and discriminate on the basis of race, HEW has continued its substantial Federal aid payments to those institutions, declining to initiate any action to secure compliance with Title VI. Defendants' failure to exercise the jurisdiction called for by

Title VI has caused a direct violation of the rights of the plaintiffs, in that they have thereby been "subjected to discrimination, under [a] program or activity receiving Federal financial assistance."

16. The aforesaid violations of the rights of the individual plaintiffs are symptomatic of a general refusal by HEW to exercise its Title VI jurisdiction with respect to any school districts wherein judicial desegregation orders have issued. In not less than 426 separate school districts where there are outstanding judicial desegregation orders, defendants have declined to undertake any exercise of HEW's jurisdiction under Title VI, although in many of them there continues to be racial segregation and discrimination in defiance of the order of the court and/or of the United States Constitution.

17. HEW's default on its statutory duties as set forth in the preceding paragraph is grounded on its misconstruction of a proviso appended in 1968 to Title VI by Public Law 90-247 (42 U.S.C. §2000d-5), which states:

> "Provided, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned."

It is manifest from the face of the proviso in Public Law 90-247 that HEW is laboring under a legal misconception in its general refusal to exercise jurisdiction under Title VI in any school district where there is a judicial desegregation order outstanding. Whereas the proviso of the Public Law applies only in a situation of "compliance" by a school district with a Federal court desegregation order, HEW has wholly failed to monitor, investigate or determine whether in any of the more than 426 school districts involved there is actual compliance with the court's order. Many school desegregation court orders have been secured by civil rights lawyers whose resources are grossly inadequate to monitor, investigate or determine whether such court orders are being violated. Only HEW has the resources and expertise available to monitor whether such school districts are complying with court orders. In fact, in many such school districts, including those attended by the individual plaintiffs herein, there is not such compliance.

18. Defendants, by declining to exercise their jurisdiction under Title VI in any school district subject to a judicial desegregation order, without investigation whether there is compliance with such order or finding that in fact there is such compliance, and without regard to whether the segregation or discrimination being practiced is subsumed in the judicial order outstanding, have violated and continue to violate the Title VI and Fifth Amendment rights of the plaintiffs and others similarly situated.

19. Plaintiffs are irreparably injured by the defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief declarations by this Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to public schools attended by plaintiffs wherein they are subject to racial segregation and discrimination, and

(2) Defendants are required to exercise their jurisdiction under Title VI with respect to public school districts subject to judicial desegregation orders, instituting appropriate action to discontinue Federal financial assistance where

upon proper investigation defendants find that there is not in fact compliance by the school district with the outstanding judicial desegregation order, or where defendants find that the school district is practicing discrimination or segregation in an area or activity not encompassed by an outstanding judicial order.

SECOND CAUSE OF ACTION - PUBLIC HIGHER EDUCATION

20. Plaintiffs Jack R. Gautreaux, age 22, and Mary Fullenkamp, age 21, are white students attending Louisiana State University, a state university in New Orleans, Louisiana. Of 6002 students attending Louisiana State, 5227 are white, 565 are black, and 210 are American Indian, Oriental or Spanish surnamed. Southern University, another state university in New Orleans, has 1783 students all of whom are black. Both universities offer similar and overlapping courses and services. Formerly segregated by law, these Louisiana universities are continuing to segregate and discriminate on the basis of race in violation of the Fourteenth Amendment.

21. Plaintiffs Waddia Ann Brown, age 21, and Sandra Lee Wright, age 22, are black students attending Tennessee State University in Nashville, Tennessee. All but five of Tennessee State's 4372 students are black. The University of Tennessee, another state university in Nashville, has 315 students, of whom 297 are white. The latter university is in the process of expansion. Both universities offer similar and overlapping courses and services. Formerly segregated by law, these Tennessee universities are continuing to segregate and discriminate on the basis of race in violation of the Fourteenth Amendment.

22. Although defendants have long known that the institutions of public higher education attended by plaintiffs segregate and discriminate on the basis of race, HEW has continued its substantial Federal aid payments to those institutions, declining to initiate any Title VI enforcement or compliance proceedings. The defendants' failure to exercise the jurisdiction called for by Title VI has caused a direct violation of the rights of the plaintiffs, in that they have thereby been "subjected to discrimination, under [a] program or activity receiving Federal financial assistance."

23. The aforesaid violations of the rights of the plaintiffs are symptomatic of a general failure by HEW to exercise its Title VI jurisdiction in the area of public higher education. There are 1079 public colleges and universities in the United States of whom the high majority receive Federal financial assistance. Although many of these institutions of higher education are totally or substantially segregated and discriminate against black students on the basis of race, no state, state college or state university has even been cited for noncompliance with Title VI by HEW. Thus, for example, Federal funds have not been cut off from the following virtually all black and white "sister" public institutions in the same city offering similar and overlapping courses and services:

City and State	College	Total Students	Black	White	Other
Tallahassee, Fla.	Fla. A. & M.	3,367	3,355	12	0
"	Fla. State	12,083	131	10,960	992
Savannah, Georgia	Savannah State	1,901	1,898	2	1
"	Armstrong State	1,081	44	1,023	14
Norfolk, Virginia	Virginia State	4,075	4,075	0	0
"	Old Dominion Col.	8,892	40	8,833	19
Baton Rouge, La.	Southern Univ.	6,909	6,909	0	0
"	La. State Univ.	13,394	268	12,757	369

City and State	College	Total Students	Black	White	Other
New Orleans, La.	Southern Univ.	1,783	1,783	0	0
"	La. State Univ.	6,002	565	5,227	210
Shreveport, La.	Southern Univ.	581	581	0	0
"	La. State Univ.	1,002	43	948	11
Grambling, La.	Grambling College	3,718	3,704	10	4
Ruston, La. (2 cities 3 mi. apart)	La. Polyt. Inst.	6,186	94	6,057	35
Greensboro, N.C.	North Car. A. & T.	3,360	3,358	2	0
"	Univ. of North Car.	4,442	110	4,330	2
Nashville, Tenn.	Tennessee State	4,372	4,367	5	0
"	Univ. of Tennessee (being expanded)	315	18	297	0
Montgomery, Ala.	Ala. State	1,886	1,884	2	0
"	Auburn Univ. (being expanded)	97	6	90	1

Nor, as will be shown below, have Federal funds been cut off from ten state college and university systems which HEW itself has found not in compliance with Title VI.

24. Defendants themselves have recognized the statutory necessity for the exercise of jurisdiction in the area of segregated higher education, although still declining to exercise it. Thus, on January 13, 1969, a representative of the HEW Office for Civil Rights wrote to officials of the State of Louisiana, the state which supports and controls Louisiana State University which plaintiffs Gautreaux and Fullenkamp attend, stating that compliance reviews conducted during November 1968 revealed that:

> "the State of Louisiana is operating a system of higher education that is racially segregated on a state-wide basis. Specifically, the reviews revealed that two of the state colleges, Southern University and Grambling College, have a student enrollment which is nearly 100% Negro, whereas the other eight state colleges have a student enrollment which is approximately 96% white. In addition, there is little or no faculty desegregation, athletic team desegregation, etc. at many of the institutions comprising the Louisiana State system of higher education."

To remedy this blatant violation of Title VI, HEW directed the State to submit an "outline" of a desegregation plan within 120 days and a "final" plan no more than 90 days after HEW commented on the outline plan. Louisiana simply chose to ignore HEW's directive and submitted no plan. Yet HEW has never cited Louisiana for noncompliance or noticed a termination of funds hearing.

25. Since January 13, 1969, HEW has sent letters to nine other states with segregated systems of higher education (in addition to Louisiana) directing the submission of outline and final desegregation plans. Mississippi, Oklahoma and Florida have followed Louisiana's example by refusing to submit even outline plans. Although Arkansas and Pennsylvania submitted final desegregation plans in 1969, HEW has taken no action thereon. Georgia's more recent outline plan has not been acted upon and Virginia, North Carolina, and Maryland have been given further time to submit final plans. In short, even among those states recognized by HEW as violators of Title VI, no state is being required to implement "at once" a desegregation plan. Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969).

26. HEW has failed to send letters directing the submission of desegregation plans to such states as Tennessee and Alabama whose state college and university systems are subject to judicial desegregation orders. In Tennessee, where plaintiffs Brown and Wright are students, private parties and the Justice Department have sought to desegregate the state college system. In particular, an attempt has been made to forestall the expansion of "white" University of Tennessee at Nashville because of the presence in Nashville of "black" Tennessee State

attended by plaintiffs. Although the court's order requiring the submission and implementation of a desegregation plan has been violated by officials of the State of Tennessee, HEW has declined to exercise its jurisdiction under Title VI with respect to the State of Tennessee.

27. HEW's default on its statutory duties as set forth in the preceding paragraph is grounded on its misconstruction of the proviso appended to Title VI (see §17 supra) which states that an educational agency is in compliance with Title VI if such agency is in compliance "with a final order or judgment of a federal court." Whereas this proviso of Title VI applies only in a situation of "compliance" by a state college system with a Federal desegregation order, HEW has wholly failed to monitor, investigate, or determine whether such states as Tennessee or Alabama are in fact complying with the orders requiring desegregation of their state college systems. In fact, in such states as Tennessee, in which plaintiffs Brown and Wright are students, there is no such compliance.

28. HEW has thus knowingly failed, and continues to fail, to withhold Federal funds from public colleges and universities which segregate and discriminate on the grounds of race. HEW has thus declined to exercise its jurisdiction under Title VI with respect to institutions of higher education and in many states such as Louisiana has done so without the slightest pretext or color of law, all in violation of the Title VI and Fifth Amendment rights of plaintiffs and others similarly situated.

29. Plaintiffs are irreparably injured by the defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on this cause of action declarations by this Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to public institutions of higher education attended by plaintiffs wherein they are subject to racial segregation and discrimination, and

(2) That defendants are required to exercise their jurisdiction under Title VI in the area of higher education, instituting appropriate action to discontinue Federal financial assistance to all public colleges and universities practicing racial segregation or discrimination.

THIRD CAUSE OF ACTION - STATE DEPARTMENTS OF EDUCATION

30. Plaintiffs Cassandra Thurmon, age 11, Ethel Mae Thurmon, age 9, and Terry Minnifield Thurmon, age 18, are black students attending the Humphreys County Attendance Center in the Humphreys County, Mississippi school district. They sue through their mother, Mrs. Bessie R. Thurmon. Plaintiffs Elizabeth Ray and Belinda Ray are black students in the 12th and 8th grades respectively in the Humphreys County Attendance Center and sue through their mother, Mrs. Bernice Ray. Plaintiffs' school district has applied to the Mississippi Department of Education for Federal financial assistance under Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §241e. After such application was approved, plaintiffs' district used such monies under Title I to purchase portable classrooms. The purchase of such classrooms has enabled plaintiffs' school district to create an educational park where all students in the district are divided into groups or tracks and where faculty and students are segregated by race. For example, in groups 3 and 4 of the middle grades 5 through 8, all students and teachers are black. The same is true for group 3 of the high school grades. Title I

monies were also used to pay for the testing of students to divide them into the aforesaid tracks. In addition, the purchase of these portable classrooms and the creation of the educational park enabled the school district to close three formerly all black schools including the large Montgomery school constructed since the Brown decision in 1954 and formerly occupied by almost 25% of the students in the district. The result is that white students are not required to travel to schools in black residential areas and black students are required to travel long distances unnecessarily. The above segregationist and discriminatory uses of Title I monies by the Humphreys County School district were knowingly approved by the Mississippi Department of Education.

30a. Plaintiffs Robert F. Jordan, age 29 and Mrs. Wanda L. Brown, age 26, are black students attending the Delta Area Vocational School in Monroe, Louisiana. Plaintiffs' school has 186 black students and 4 white students, 8 black teachers and 2 white teachers. This school is one of 32 vocational schools administered by the Louisiana Department of Education. Seven of these schools have an overwhelming percentage of black students and faculty while 25 have an overwhelmingly white percentage of students and faculty. The Louisiana Department of Education utilizes substantial Federal financial assistance in the administration of those segregated schools.

31. Although defendant officials of HEW have known, or should have known, that the Mississippi Department of Education has knowingly approved the expenditure of Title I monies by local school districts in the discriminatory or segregationist manner described in paragraph 30 above, and that the Louisiana Department of Education has utilized federal financial assistance in the administration of the segregated vocational school system described in paragraph 30a above, HEW has

continued its substantial federal payment to these State Departments of Education, declining to initiate any action to secure compliance with Title VI. Defendants' failure to exercise the jurisdiction called for by Title VI has caused a direct violation of the rights of the plaintiffs in that they have thereby been "subjected to discrimination, under [a] program or activity receiving Federal financial assistance."

32. The aforesaid violations of the rights of the individual plaintiffs are symptomatic of a general failure by HEW to exercise its Title VI jurisdiction with respect to State Departments of Education which approve and administer programs of Federal financial assistance. While HEW has secured from each State Department of Education a "Statement of Compliance" in which the State Department assured HEW that it would fulfill its nondiscrimination responsibilities as a condition for the receipt of Federal financial assistance, HEW has wholly failed to require such State Departments of Education to fulfill these pledges of compliance. HEW has failed to monitor, investigate or determine whether any of the State Departments of Education knowingly approved the expenditure of Title I monies by local school districts in a segregationist or discriminatory manner or utilized Federal financial assistance in the administration of segregated vocational schools. In fact, in many instances such as the examples recited above, the State Departments of Education have approved for administered programs of Federal financial assistance which have furthered segregation and discrimination against plaintiffs and others similarly situated.

33. Defendants, by declining to exercise their jurisdiction under Title VI with respect to State Departments of Education, without investigation to determine whether such State Departments of Education have been complying with their obligation to approve and administer programs of Federal financial assistance in a nondiscriminatory manner, have violated and continue to violate the Title VI and Fifth Amendment rights of plaintiffs and others similarly situated.

34. Plaintiffs are irreparably injured by the defendants' violation of their rights as aforesaid. Accordingly, they seek as relief declarations by this Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to State Departments of Education which approve and administer programs of Federal financial assistance in which plaintiffs are subject to racial segregation and discrimination, and

(2) Defendants are required to exercise their supervisory jurisdiction under Title VI with respect to State Departments of Education which approve and administer programs of Federal financial assistance, instituting appropriate action to discontinue such Federal financial assistance whenever, upon proper investigation, defendants find that there is not in fact compliance by the State Department of Education with its obligation to approve and administer programs of Federal financial assistance without discrimination or segregation.

FOURTH CAUSE OF ACTION - RENEGING DISTRICTS

35. Plaintiffs Euretha Lynn West, age 13, and Stephanie Halliburton, age 16, are black students attending public schools in the Dyer County, Tennessee school district. They sue through their mothers, Mrs. Myra West and Mrs. Iris Halliburton, respectively. Plaintiffs' schools were segregated at the time of the enactment of Title VI in 1964. HEW, upon determining that plaintiffs' schools were not subject to judicial desegregation orders but were still in the process of "eliminating a dual school structure" (HEW Guidelines, March 1968) required as a condition for receipt of further Federal financial assistance that the school district agree to implement an HEW-approved desegregation plan. Such plans are generally the subject of intense negotiations between defendants and the individual school district, and compliance with the ultimately approved plan is made a prerequisite by HEW for receipt by the district of Federal financial assistance. In

the case of the school district wherein plaintiffs are in attendance, a desegregation plan was duly approved by HEW and accepted by the school district on December 18, 1968 as the condition for its receipt of further HEW financial assistance.

36. However, HEW officials learned during an on-site review on September 9, 1969 that plaintiffs' school district had reneged on its desegregation commitment. When further negotiations proved unsuccessful HEW notified the Dyer County school district in November, 1969 that the file of the district was being referred to officials in Washington for enforcement action. However, during the 1969-1970 school year the district continued its contumacy and disobedience of the desegregation requirements previously imposed as the condition of its continued eligibility for Federal assistance, and yet defendants continued to grant Federal financial assistance to the district throughout the 1969-1970 school year.

36 (a). Plaintiffs Gerald Wayne Rainey, age 11, and Helen Ruth Moore, age 11, are black students attending public schools in the Conway County, Arkansas school district. They sue through their fathers, Carl Rainey and James Edward Moore, respectively. Plaintiffs' schools were segregated at the time of the enactment of Title VI in 1954. However, a desegregation plan was duly approved by HEW on August 29, 1968, as the condition for its receipt of further HEW financial assistance. During November, 1969, HEW learned that plaintiffs' school district had reneged upon its desegregation commitment. This contumacy and disobedience of the desegregation requirements previously imposed as the condition of the district's continued eligibility for Federal assistance continued throughout the 1969-1970 school year, and yet defendants

continued to grant Federal financial assistance to the district throughout this school year. On July 23, 1970 HEW officials notified the district that the case would be referred to the Justice Department. Although the school district is continuing its contumacy and blatant non-compliance with Title VI, HEW has taken no further action and has continued to grant Federal financial assistance to the school district.

37. Defendants having had full notice of the contumacy of plaintiffs' school districts, but nevertheless having continued Federal financial assistance thereto, thereby violated plaintiffs' rights under Title VI, since plaintiffs have thus continued to be "subjected to discrimination, under [a] program or activity receiving Federal financial assistance."

38. The aforesaid violations of plaintiffs' rights are symptomatic of a general failure by HEW to secure rights under Section 601 when there has been probable cause to believe that school districts have reneged upon commitments under HEW-approved desegregation plans. During the past two years in at least 99 school districts subject to HEW desegregation plans there have been major defaults in compliance made known to the defendants. In some of these districts without color of law or

justification defendants completely ignored for long periods of time the districts' default and thus the continued practice of segregation and discrimination by recipients of HEW assistance. In many of the districts defendants initiated protracted and inefficient formal procedures, meanwhile continuing to make Federal financial payments to said districts long after they had probable cause to believe that default on the promised and prerequisite compliance measures rendered the districts ineligible under Title VI. In many cases lengthy investigations by regional HEW offices followed initial notice of the district's contumacy, without suspension of Federal payments to the district. Thereafter, as much as five or six months passed in some cases following formal notice from the regional office to the defendants that investigation disclosed contumacy by the school district (and recommending formal proceedings) before even a formal notice of hearing was issued by defendants. That was the case in Hot Springs, Arkansas, St. John's County, Florida, and Hearne Independent, Texas school districts. During these periods of delay between regional office notification to defendants and their formal action, HEW continued its Federal financial assistance to the school districts involved. And after formal notices of hearing were issued by defendants, protracted HEW proceedings followed, during which such Federal assistance continued to flow to districts ineligible by reason of Title VI for further Federal aid.

39. As set forth in the preceding paragraph, students in numerous school districts subject to HEW-approved desegregation plans but reneging on the plan requirements, have been denied their rights under Section 601 of Title VI and the Fifth Amendment by virtue of continued HEW financial payments to districts wherein segregation and discrimination is practiced.

40. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on this cause of action declarations by the Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to public schools attended by plaintiffs wherein they are subject to racial segregation and discrimination, and

(2) To prevent irreparable violation of rights under Sectipn 601 of Title VI and the Fifth Amendment, upon notice to defendants of probable cause to believe that a school district has defaulted on its commitments under an HEW-approved desegregation plan defendants are required to suspend all Federal financial assistance to such school district until and unless they finally determine, after expeditious hearing procedures, that the district is in fact in compliance with its desegregation plan.

FIFTH CAUSE OF ACTION - DISTRICTS IN ENFORCEMENT PROCEEDINGS

41. Solomon V. Thompson, age 16, and Charlotte McDaniel, age 11, are black students attending schools in the Newport News, Virginia school district. They sue through their fathers, Dr. V. F. Thompson and Ernest McDaniel, respectively. The schools in said district were segregated by law at the time of the Supreme Court's ruling in Brown v. Board of Education, segregated by practice at the time of the enactment of Title VI in 1964 and continue to be segregated at this time. In 1967 and 1968 HEW sought to secure a voluntary desegregation plan from plaintiffs' school district, but was unsuccessful. Accordingly, having determined prima facie that said district was

ineligible by virtue of discriminatory practices to receive Federal financial assistance, on August 14, 1968 HEW initiated formal enforcement procedures against the district. In almost all such cases brought to hearing experience has shown that noncompliance has ultimately been demonstrated. This was the case in the Newport News proceeding involving plaintiffs' school district, where the Hearing Examiner found noncompliance in a decision issued February 11, 1970. HEW's Reviewing Authority upheld the Examiner's decision on October 1, 1970. Nevertheless, in the three years since HEW first administratively determined that plaintiffs' school district was ineligible under Title VI because of its racial segregation practices, and in the 26 months since it initiated formal enforcement proceedings against the district, defendants have continued Federal financial assistance payments to the district, declining to suspend such payments while the proceedings have been in progress, or to provide for any recapture thereof after the proceedings are concluded. By virtue of that action defendants have violated plaintiffs' rights under Section 601 of Title VI, causing them to be "subjected to discrimination, under [a] program or activity receiving Federal financial assistance."

42. Defendants have elsewhere recognized the power of immediate suspension of Federal financial assistance to school districts after initiation of enforcement proceedings, which power they have wrongfully declined to exercise as alleged in the previous paragraph. Thus, coincident with the initiation of formal enforcement proceedings HEW regularly suspends funds for "new" programs, that is, programs under the same statutes as existing grants but which cost substantially more, or programs under different statutes. However, funds for so-called

"continuing" programs are not suspended even though the school district must reapply for such financial assistance each year. In addition, HEW makes all payments on programs approved prior to the notice of hearing. The result is that after HEW has decided that a district is *prima facie* ineligible to receive Federal funds and has noticed a hearing, it continues to grant Federal financial assistance to such districts.

43. The violation of plaintiffs' rights caused by HEW's failure to suspend the flow of Federal funds during enforcement proceedings, or to provide for recapture rights therein, is exacerbated by the extraordinary delays during such proceedings. Thus, at least one or two years have generally passed between HEW's notice of hearing and the termination of funds. In plaintiffs' district more than two years have already passed since the notice of hearing without a final decision on termination of funds having been made.

44. The aforesaid violations of plaintiffs' rights are symptomatic of a general failure by HEW to secure rights under Section 601 after HEW has determined *prima facie* that the school district is ineligible to receive Federal funds. Having made such a determination, HEW refuses to suspend funds for previously approved programs or for "continuing" programs approved after notice of hearing. In addition, defendants refuse to make provision for the recapture of such expended Federal monies in the event of a hearing determination of noncompliance. The result is an emasculation of the Title VI and Fifth Amendment rights of the plaintiffs and others similarly situated.

45. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on this cause of action declarations by the Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to public schools attended by plaintiffs wherein they are subject to racial segregation and discrimination, and

(2) To prevent irreparable violations of rights under Section 601 of Title VI and the Fifth Amendment, upon defendants' determination that a district is prima facie ineligible to receive Federal funds, defendants are required either (a) to suspend all Federal financial assistance to such school district until and unless they finally determine, after expeditious hearing procedures, that the district is in fact in compliance with Title VI; or (b) to make provision for the recapture of all such Federal financial assistance expended during the course of such expeditious hearing procedures in the event of a hearing determination of noncompliance.

SIXTH CAUSE OF ACTION - OBSOLETE PLAN DISTRICTS

46. Plaintiffs Dianne Young, age 9, and Linda Ford, age 15, are black students attending schools in the Forrest City, Arkansas school district. They sue through their mothers, Mrs. Ora Lee Young and Mrs. Georgia Lee Ford, respectively. Plaintiffs Sheila Faye Thomas, age 12, and Chester Fairley, Jr., age 12, are black students attending schools in the Gulfport, Mississippi Municipal Separate School District. They sue through their mothers, Mrs. Edmonia Norris and Mrs. Vera Fairley, respectively. Prior to the Supreme Court decision on October 29, 1969 in Alexander v. Holmes County Board of Education, 396 U.S. 19, HEW had permitted plaintiffs' school districts to postpone complete school desegregation until September 1970. In approving desegregation plans so providing,

HEW should have known that such delay in implementation was probably not in conformity with the Constitution. In any event, all doubt was removed by the Supreme Court's ruling in *Alexander* that "the obligation in every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." Nevertheless, even after the October 29, 1969 Supreme Court ruling rendered the delayed compliance provisions of plaintiffs' school districts' plans clearly obsolete and invalid, defendants failed to require plaintiffs' districts to desegregate immediately and continued to make Federal assistance payments to them with full knowledge of their ineligibility. In thus expending Federal funds throughout the 1969-1970 school year to plaintiffs' districts plainly ineligible to receive them under Title VI, defendants thereby manifestly deprived plaintiffs of their right protected by Title VI and the Fifth Amendment.

47. Plaintiffs Alice Moore, age 14 and Linda Lee Cody, age 7 are black students attending schools in the Osceola, Arkansas school district. They sue through their parents, Mrs. Madelyn Moore and A. B. Cody, respectively. Prior to the Supreme Court's decision on October 29, 1969 in *Alexander*, *supra*, HEW had permitted plaintiffs' school district to postpone complete desegregation until September 1970. Following the ruling in *Alexander* requiring desegregation "at once", rendering the September 1970 plan of plaintiffs' school district obsolete and invalid, defendants failed to require plaintiffs' district to desegregate immediately and continued to make Federal assistance payments thereto with full knowledge of the district's ineligibility. Indeed, in the spring of 1970 defendants agreed to postpone the desegregation deadline until

as late as September 1971. In thus expending federal funds for more than one school year after Alexander to plaintiffs' district plainly ineligible to receive them under Title VI, and in thus promising to continue such unlawful expenditures until as late as September 1971, defendants thereby manifestly deprived plaintiffs of their rights protected by Title VI and the Fifth Amendment.

48. Defaults by defendants similar to those set forth in the preceding paragraphs were consummated by them in 1969-1970 in at least 84 other school districts with September 1970 desegregation plans. It has been HEW's practice, upon such a "clarification" of the law as in Alexander, to refuse to require conformity with such modification or clarification until at least the following school year. By such practice HEW has continually expended funds to school districts ineligible to receive them, in violation of the Title VI and Fifth Amendment rights of plaintiffs and others similarly situated.

49. Plaintiffs are irreparably injured by defendants' violations of their rights, as aforesaid. Accordingly, they seek as relief on this sixth cause of action declarations by the Court that:

(1) Defendants have violated plaintiffs' rights under Section 601 of Title VI by granting Federal financial assistance to public schools attended by plaintiffs wherein they are subject to racial segregation and discrimination, and

(2) To prevent irreparable violation of rights under Section 601 of Title VI and the Fifth Amendment, upon a Supreme Court change or clarification of desegregation requirements rendering obsolete and invalid a school district's approved plan of desegregation,

defendants are required to suspend all Federal financial assistance to such school district until and unless they finally determine, after expeditious hearing procedures, that the district is in fact in compliance with the prevailing desegregation requirements of the Federal Constitution.

* * * *

50. By reason of the defaults outlined in the above six causes of action, HEW has been expending from Federal tax revenues financial assistance to racially segregating and discriminating public schools and colleges, thereby violating Title VI, and the Fifth and Fourteenth Amendments to the Constitution. Plaintiffs Maurice Finkelstein and Virginia DeC. Frank, suing as Federal taxpayers whose taxes are being thus expended, are entitled to declaratory and other relief against further unconstitutional expenditure of Federal tax revenues by defendants to support racially segregated systems of public education.

RELIEF

WHEREFORE, plaintiffs pray that this Court grant them:

(1) The declaratory relief requested in Paragraphs 19, 29, 34, 40, 45, 49 and 50 above;

(2) Such injunctive relief as may be necessary to secure the rights thus declared;

(3) Such other and further relief as may be proper in the premises.

Respectfully submitted,

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APPENDIX K

ADAMS ORDERS OF MARCH 11 AND 24, 1983

FILED
MAR 1 1 1983
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH ADAMS, *et al.*,)
Plaintiffs,)
v.) Civil Action No. 3095-70
TERREL H. BELL, SECRETARY)
OF EDUCATION, *et al.*,)
Defendants.)

WOMEN'S EQUITY ACTION LEAGUE, *et al.*,)
Plaintiffs,)
v.) Civil Action No. 74-1720
TERREL H. BELL, SECRETARY)
OF EDUCATION, *et al.*,)
Defendants.)

ORDER

The Court has before it defendants' motion to vacate the Consent Order of December 29, 1977. The grounds of defendants' motion are stated to be: (1) a change in facts, (2) a better consideration of the facts in light of experience, and (3) a change in the law. Upon consideration of defendants' motion and the oppositions thereto, we are satisfied that defendants' showing in support of their motion to vacate does not meet the applicable standard that there be "a clear showing of grievous wrong evoked by new and unforeseen conditions," United States v. Swift & Co., 286 U.S. 106, 119 (1932), and that "the purposes of the litigation as incorporated in the decree", United States v. City of Chicago, 663 F.2d

1354, 1360 (7th Cir. 1981), have been accomplished.

Accordingly, it is by the Court this 10th day of March, 1983,

ORDERED that defendants' motion to vacate the Consent Order of December 29, 1977 be and the same hereby is denied.

J. H. Pratt
John H. Pratt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
MAR 11 1983
JAMES F. DAVEY, Clerk

KENNETH ADAMS, et al.,
Plaintiffs,
v.
TERREL H. BELL, SECRETARY OF EDUCATION, et al.,
Defendants.

Civil Action No.3095-70

WOMEN'S EQUITY ACTION LEAGUE, et al.,
Plaintiffs,
v.
TERREL H. BELL, SECRETARY OF EDUCATION, et al.,
Defendants.

Civil Action No. 74-1720

ORDER

Preamble

1. The Consent Order entered by this Court on December 29, 1977 imposed timeframes and related requirements for disposition of cases under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973 and Executive Order 11246, as amended, based upon principles set forth in Paragraph F of this Court's Order of March 14, 1975 and in the Order of June 14, 1976 negotiated by the parties.

ii. Ruling on motions filed by plaintiffs and plaintiff-intervenors, on February 10, 1982 this Court issued an Order for defendants to show cause whey they should not be held in contempt of court for failure to adhere to the requirements of the December 29, 1977 Order.

iii. After a hearing on the Order to Show Cause, on March 15, 1982, this Court found that the December 29, 1977 Order "has been violated in many important respects"; ordered that the parties attempt to reach an agreement on a new order by August 15, 1982, or absent such agreement that the parties submit separate orders for consideration by the Court; and declined to discharge the Rule to Show Cause, stating that this Court "will again get into the question of what coercion will be necessary to insure the compliance with this Order, absent the consent of the parties."

iv. On July 13, 1982, in a hearing in chambers, this Court again addressed the importance of the Order, finding that if the government is "left to its own devices, the manpower that would normally be devoted to this type of thing, . . . might be shunted off into other directions, will fade away and the substance of compliance will eventually go out the window." This Court also stated that the December 29, 1977 Order should provide the structure for any consideration of changes and modifications.

v. The best efforts of the parties did not result in an agreement on an Order.

vi. Consistent with these directives, the provisions herein modify the terms of the 1977 Consent Order as it applies to the defendants officials of the Department of Education (ED) and the Department of Labor (DOL), their successors, agents and employees.

vii. The provisions in Parts I and II herein relate to all educational institutions in the United States covered by Title VI, Title IX and Section 504 which receive financial assistance from ED, and all other entities in the United States which receive ED funds covered by Section 504. The provisions in Part III herein apply to all educational institutions which receive federal contract funds covered by Executive Order 11246.

viii. The Rule to Show Cause is discharged. Nothing in this Order however, shall prevent plaintiffs and intervenors from seeking such further relief as they deem appropriate, against defendants or any other party, to vindicate their rights under the Constitution, Title VI, Title IX, Section 504, the Executive Order, or other provisions.

Defendants, their successors, agents and employees are enjoined as follows:

PART I: TRANSITIONAL PROVISIONS

1. The complaints and compliance reviews pending at the date of entry of this Order, which have not been processed within the timeframes required by the December 29, 1977 Order, shall be processed in accordance with the provisions of this paragraph:

(a) ED shall resolve (process to the formal enforcement stage, if necessary) all complaints and compliance reviews in which investigations have been completed within 90 days of the date of entry of this Order.

(b) ED shall resolve all complaints and compliance reviews in which investigations have not been completed within 180 days of the date of entry of this Order.

(c) However, ED may resolve up to twenty percent of the total number of these pending complaints and compliance reviews as late as one year from the date of entry of this Order.

4. All complaints and compliance reviews which have been processed in accordance with the timeframe provisions (¶¶ 15, 22) of the 1977 Order may be processed in accordance with such provisions as modified in Part II of this Order.

5. For those long-pending complaints in which investigations have been effectively suspended, ED shall for 60 days make reasonable efforts to notify the complainant that ED is now prepared to process the complaint. If, after reasonable efforts are made, ED is unable to locate the complainant or the complainant does not wish to pursue the allegation, the complaint may be closed. Any complaint so closed shall be reopened only upon good cause shown.

PART II: PROVISIONS REGARDING ENFORCEMENT OF THE APPLICABLE LAWS

A. Definitions

1. A "complaint" is defined as an allegation that an affected institution has violated one or more of the applicable laws and/or the regulations promulgated under those laws. A "complete complaint" is one which (a) identifies the complainant by name and address; (b) generally identifies or describes those injured by the alleged discrimination (names of the injured person or persons shall not be required); (c) identifies the affected institution or individual alleged to have discriminated in sufficient detail to inform the Office of Civil Rights what discrimination

occurred and when it occurred to permit ED to commence an investigation. To be complete the complaint need not allege the law or laws being violated. A complaint which is substantially modified or amended by the complainant (e.g. addition of new allegations or recipients) subsequent to its acknowledgement shall be deemed a new complaint for the purposes of computing the permissible time.

4. A "compliance review" is an investigation or review (other than one limited to the investigation of a specific complaint) of an affected institution undertaken by ED in order to determine whether the institution is in compliance with the applicable laws and/or the regulations promulgated under those laws.

5. An "affected institution" is an educational institution or other entity (hereinafter institution) in the United States which administers a program or activity receiving federal financial assistance from ED. The "applicable laws" are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973, as amended.

B. Procedures for Handling Complaints

6. Within 15 calendar days of receipt of a complaint, ED shall notify the complainant in writing whether the complaint is complete or incomplete.

(a) If the complaint is complete, ED shall notify the complainant, within 15 days of receipt of the complaint, whether ED has jurisdiction over the allegations in the complaint, whether the complaint is patently frivolous; of the timeframes, procedures and laws applicable to the processing of the complaint; and if an on-site investigation is planned, the date scheduled for the investigation of the complaint. If it is determined subsequent to the 15 day period that an on-site investigation will be held, notice of the on-site investigation shall be given at the time of such determination.

(b) If the complaint is incomplete, ED shall notify the complainant, within 15 days of receipt of the complaint, of the particular elements missing in the complaint filed, the information and steps needed to complete the complaint, and the date by which further information necessary to complete the complaint must be received. If the information necessary to complete the complaint is not received within 60 days of the notification, ED shall close the complaint and shall so notify the complainant. For good cause shown, requests to reopen complaints which were closed because of incompleteness shall be granted by the Assistant Secretary for Civil Rights or an authorized designee. If the information necessary to complete the complaint is provided within 60 days, ED shall, within 15 calendar days of receipt of the information, notify the complainant of the information described in paragraph (a) herein.

(c) ED shall also notify the complainant that if any individual is harassed or intimated by the affected institution because of filing of the complaint or participating in the investigation of the complaint, such individual may file a complaint alleging such harassment or intimidation which will be handled pursuant to the timeframes set forth herein or on an expedited basis, if ED so determines.

7. Within 15 days of receipt of a complete complaint, ED shall notify the affected institution in writing of the nature of the complaint, the timeframes and procedures for processing complaints, the applicable legal authorities, and if an on-site investigation is planned, the date scheduled for the investigation of the complaint. If it is determined subsequent to the 15 day period that an on-site investigation will be held, notice of the on-site investigation shall be given at the time of such determination.

8. During the investigation of the complaint, ED shall investigate all allegations in the complaint, interview the complainant, contact and develop information from the affected institution and witnesses having information relevant and material to determine whether a violation has occurred, and shall afford to each a full opportunity to present all evidence. During the investigation, whenever the Office of Civil Rights (OCR) anticipates making a partial or total finding adverse to the complainant ED shall advise the complainant of the evidence either by showing the evidence or by summarizing such evidence. Complainants shall be provided a timely opportunity to respond to such evidence.

9. Once ED determines whether a violation has occurred, it shall notify the complainant and the affected institution of the determination through a letter of findings. The letter of findings shall address all allegations and issues raised in the complaint and during the investigation. It shall set out ED's conclusions regarding each allegation and issue, supported by an explanation or analysis of the relevant information on which the conclusions are based, and set out an outline of the corrective

action required, if any. If such corrective action is required, the letter of findings must include a determination of noncompliance as the basis for the corrective action. However, this provision does not preclude a negotiated settlement of the complaint before a letter of findings is required to be issued under ¶ 12(b)(1) or ¶ 13(b) below. Further, ED shall notify the complainant that upon request, it will provide to the complainant a copy of all ED correspondence sent to the affected institution subsequent to the letter of findings, pertaining to ED's determination with respect to the complaint.

10. If ED makes a finding of noncompliance, ED shall seek voluntary compliance through negotiations. Prior to the initiation of negotiations, ED shall consult with and obtain from the complainant any information which may be needed to fashion an appropriate remedy. During the period of negotiations, ED also shall keep the complainant advised of the status of the negotiations as they apply to the remedy being sought for the complainant. If OCR believes that a settlement offer less than that requested by the complainant is appropriate, ED shall advise the complainant of the evidence, if any, and the reasons supporting its belief in the manner set forth in ¶ 8 above. If corrective action is secured, ED shall notify the complainant of the corrective action taken.

11. If voluntary compliance cannot be secured through the negotiations process, ED shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law.

C. Timeframes Concerning Complaints

12. ED shall investigate and resolve all complaints under the applicable laws within the following timeframes:

(a) Within 15 calendar days of receipt of a complaint, ED shall issue the notification required in ¶¶ 6(a) or 6(b) above.

(b) Complete complaints:

(1) If the initial complaint is complete or upon its completion, ED shall conduct a prompt investigation to determine whether a violation has occurred. Such determination shall be made in writing within 105 days of receipt of the complete complaint.

(2) If a violation has occurred, ED shall attempt to bring the affected institution into voluntary compliance through negotiations. If such corrective action is not secured within 195 days of receipt of the complaint, ED shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law no later than 225 days after receipt of the complete complaint.

D. Complaint Timeframe Exception

13. In order to allow greater flexibility in the processing of complete complaints such as complaints raising complex issues or requiring policy development, an exception with longer timeframes shall apply:

(a) For those complaints not covered by the transitional provisions ¶¶ 1(a)-(c) above, not more than 20 percent of the complaints received in any fiscal year on a national basis or 30 percent of the complaints from any one subject category (Title VI-race; Title VI-national origin; Title IX; Section 504) on a national basis, and not more than 10 percent of the complaints received or handled by any one region shall be excepted from processing in accordance with ¶ 12 above.

(b) ED shall conduct a prompt investigation of such excepted complete complaints to determine whether a violation has occurred. Such determination shall be made in writing within 195 days of receipt of the complete complaint.

(c) If a violation has occurred, ED shall attempt to bring the effected institution into voluntary compliance through negotiations. If such corrective action is not secured within 315 days of receipt of the complete complaint, ED shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law no later than 345 days after receipt of the complete complaint.

E. Compliance Reviews

14. ED shall conduct an appropriate number of compliance reviews in each fiscal year to ensure adequate enforcement of the applicable law: (1) geographically dispersed throughout the country; (2) in Title VI cases, including a representative number of reviews of discrimination in student assignment in large school districts; (3) covering a range of issues in sex discrimination in elementary, secondary, and post-secondary education (including special problems of minority women); (4) covering student and employment programs and practices; (5) in Lau compliance reviews, geographically dispersed throughout the country in proportion to the needs in different regions; (6) an appropriate number of compliance reviews under section 504; (7) covering special purpose districts or schools; and (8) covering vocational education districts or

schools including reviews of state agencies implementing Methods of Administration pursuant to Section II of the Vocational Education guidelines. (45 C.F.R. § 80, App. B).

F. Compliance Review Procedures

15. At the beginning of each quarter or within ten days after ED notifies an affected institution ED also shall notify the parties which affected institutions will be subject to compliance reviews, the general subject area of the reviews, the dates on which the reviews will be commenced during the coming quarter of the fiscal year, and which reviews will be conducted pursuant to the compliance review timeframe exception under ¶ 18 below.

G. Compliance Review Timeframes

16. Within 90 days of the date that a compliance review commences, ED shall determine whether the affected institution is in compliance with the applicable laws with respect to the issues investigated during the review. If the affected institution is in compliance, ED shall notify the affected institution of the specific issues for which compliance has been found and issue a letter of findings setting forth the specific reasons therefor. If outstanding complaints against the affected institution are not resolved during the compliance review, ED shall advise the affected institution that the finding does not address the issues raised in the complaint and in no way prejudices a future investigation of the complaint. If the affected

institution is not in compliance, the letter of findings shall set forth the specific reasons therefor, and an outline of the corrective action required. If such corrective action is required, the letter of findings must include a determination of noncompliance as the basis for the corrective action. However, this provision does not preclude a negotiated settlement of the complaint before a letter of findings must be issued under this paragraph and ¶ 18 below. ED shall seek corrective action through negotiations. If such corrective action is not secured within 180 days of the commencement of the review, ED shall initiate formal enforcement action by administrative proceedings or by other means authorized by law no later than 210 days after commencement of the review. If an on-site investigation is scheduled, the timeframes set forth in this paragraph shall run from the date that ED commences the investigation at the site of the affected institution.

17. In the course of the compliance review, ED shall afford parents, students and employees of the affected institution full and timely opportunity to present to ED information regarding the subject of the affected institution's compliance with the applicable laws.

H. Compliance Review Timeframe Exception

18. In order to allow greater flexibility in the processing of compliance reviews such as those involving complex issues or requiring policy development, an exception with longer timeframes shall apply.

(a) For those compliance reviews not covered by the transitional provisions of ¶¶ 1a-c above, not more than 20 percent of the compliance reviews conducted in any fiscal year on a national basis, not more than 30 percent of the total compliance reviews from any one subject category (Title VI-race; Title VI-national origin; Title IX; Section 504), on a national basis and not more than 30 percent of the reviews conducted by any one region shall be excepted from processing in accordance with the timeframe requirements of ¶ 16 above.

(b) Within 180 days of the date that a compliance review within this exception commences, ED shall determine whether the affected institution is in compliance with the applicable laws with respect to the issues investigated during the review. If the affected institution is not in compliance, ED shall seek corrective action through negotiations. If such corrective action is not secured within 300 days of the commencement of the review, ED shall initiate formal enforcement action by administrative proceedings or by other means authorized by law no later than 330 days after commencement of the review. If an on-site investigation is scheduled, the timeframes set forth in this paragraph shall run from the date that ED commences the investigation at the site of the affected institution. If no on-site investigation is conducted, the timeframes shall run from the date ED requested information from the affected institution.

I. Limited Tolling of Timeframes

19. The timeframes for processing complaints and compliance reviews set forth in ¶¶ 1, 12, 13, 16 and 18 above shall be tolled under the following conditions:

(a) Witness Unavailability Caused by Extended Absence: If any person whose testimony is material and relevant to the allegation is unavailable by reason of an extended absence (e.g., summer recess, sabbatical or illness) so that ED is unable to complete the investigation or negotiation within the timeframes specified in ¶¶ 1, 12, 13, 16 and 18 above, ED shall notify the complainant (when applicable) that such timeframes shall be tolled during the period of the witness' absence. ED shall also provide a specified date for completion of the investigation or negotiations, which shall be no later than the time remaining in the applicable old timeframe before the timeframe was tolled.

(b) Court Order: If a court order prevents the processing of a complaint or compliance review, the applicable timeframes shall be tolled during the pendency of the court order. In the case of complaints, ED shall notify the complainant of the tolling of the timeframe.

(c) Pending Litigation: If the Assistant Secretary for Civil Rights determines that pending litigation involving the same affected institution and the same issues as are the subject of a complaint or compliance review prevents or makes inappropriate processing of the complaint or compliance review, the applicable timeframes shall be tolled during the pendency of the litigation. In the case of complaints, ED shall notify the complainant of the tolling of the timeframes.

(d) Denial of Access to Information: If an affected institution refuses to allow an investigation to be conducted, or without good cause refuses to supply records or other materials which are necessary, material and relevant and without which the investigation cannot go forward within 60 days of ED's request to do so, ED shall attempt to secure voluntary compliance within 120 days of the request. If compliance cannot be secured voluntarily, ED shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by laws within 150 days of the request, unless the Assistant Secretary for Civil Rights determines that the failure to provide access or supply records or other materials should be joined in an enforcement action of the substantive issues involved in the investigation. Where the information access issue is joined with the substantive issues, the timeframes set forth in ¶¶ 1, 12, 13, 16 and 18 above shall apply. Where the information access issue is not joined to the substantive issues, the timeframes set forth in ¶¶ 1, 12, 13, 16 and 18 shall be tolled until the information is obtained. In the case of complaints, ED shall notify the complainant of the tolling of the timeframes.

(e) Age Discrimination: In complaints containing allegations of age discrimination in addition to allegations of violations of Title IX, Title VI or Section 504, in order to allow the complaint to be forwarded to the Federal Mediation and Conciliation Service (FMCS), the applicable timeframe shall be tolled for 60 days or until the complaint is returned to OCR from FMCS, whichever is earlier. If the complaint is not resolved by FMCS within 60 days, ED must resume processing of the complaint within the applicable timeframes. ED shall notify the complainant of the duration of the tolling of the timeframes.

J. Publishing Annual Plans

20. Each year at least 60 days in advance of the fiscal year commencing with fiscal year 1983, ED shall publish a proposed annual operating plan for the coming fiscal year permitting members of the public to comment thereon. After public comment has been received and evaluated, ED shall publish a final annual plan by the close of the first quarter of the fiscal year.

K. Surveys of Affected Institutions:

21. In fiscal year 1979, HEW conducted a survey under all of the applicable laws of a representative number of elementary and secondary school districts on student services and admissions issues. ED intends to continue to conduct such surveys in alternate fiscal years with submissions due in October. Further, ED intends to conduct a survey under all of the applicable laws of a representative number of institutions of higher education that receive or benefit from ED funds covering student services issues. ED also intends to conduct a survey of vocational schools based on the updated universe of recipients included in the Fall 1979 Vocational Education Civil Rights Survey at least once every four years beginning in fall 1983. All surveys shall request the submission of information and data adequate to assist ED in determining where and if compliance reviews should be conducted, and to facilitate the processing of complaints and the identification of possible violations under the applicable laws. If ED plans any changes in the current survey at the conclusion of the present cycle of the OCR 101/102, such plans shall be submitted to plaintiffs and intervenors for comment in advance of their adoption. ED shall require each surveyed school district or affected institution to keep copies of completed surveys on file and make them available to the public on request. For those years that such surveys are submitted to ED, it shall also make the surveys which it collects available to the public.

L. Notice to the Public

22. Within 30 days of the entry of this Order, ED shall print the full terms of this Order in the Federal Register.

M. Assurance Forms:

23. ED shall require any educational institution receiving federal funds to have completed Title IX, Title VI and Section 504 assurance forms. If the regulations requiring educational institutions receiving federal funds to complete assurance forms are amended in any way, this paragraph shall be considered amended without the need to return to this Court for formal approval.

N. Reporting:

24. Six Month Reports: Defendants shall provide to the parties twice a year on April 30, (for October 1 through March 31) and on October 31 (for April 1 through September 30), information which may be supplied by computer printouts, showing its enforcement activities occurring in the previous six months as follows:

(a) Complaint/Compliance Review Actions:

(1) Similar to defendants' Exhibit B Management Indicators (submitted to the Court during the March, 1982 hearing) showing summary for nation and for each region, ~~by-basis~~, by month (and 6 month average in the reporting period) and showing separately for complaints and compliance reviews: starts/receipts; total closures; investigated closures; total pending; accountable to regions pending; number of investigators working on complaints/compliance reviews; total investigators; percent of investigators on complaints/compliance reviews; total pending per investigator; accountable pending per investigator; productivity; substantive closures; change closures; percent closures resulting in change.

(2) Similar to Table VII of defendants' current report to parties, national and regional summaries of issues for complaints closed

during the reporting period or pending on the last day of the period, by age and by basis.

(3) Similar to Table VII of defendants' current report, national and regional summaries of complaints closed during the reporting period or pending on the last day of the period, by age and by basis.

(4) Identical to Table VI of defendants' current report, a list of recipients subject to compliance reviews, by region, by basis and issue; date of on-site investigation, date of LOF, dates of referral for enforcement and initiation of enforcement.

(5) As currently prepared by OCR, national summary and regional totals of compliance reviews, by basis and by issue (e.g., as set out in paragraph 14 above) including the number of reviews open at beginning and end of reporting period; and started and closed during reporting period.

(b) Compliance with Timeframes (Complaints and Compliance Reviews)

Similar to defendants' Exhibit B, referred to in ¶ 24a, *supra*, *e.g.*, pp. 2, 4 and Table III of current report to parties, showing summaries of due dates within the reporting period and those missed, separately for complaint and compliance review actions, by nation, region and basis, including the reasons for missed due dates. This information shall be provided for the total number of complaints and compliance reviews; for those complaints and compliance reviews processed under the normal timeframes set forth in ¶¶ 12 and 16 above and for those processed under the exceptional timeframes set forth in ¶¶ 13 and 18 above.

(c) Early Warning Reports:

Data showing how long each case remains on the Early Warning Reports.

(d) Letters of Findings:

Separately for complaints and compliance reviews, a national summary, month by month, of letters of findings issued, the number in which violations were found and the number in which no violations were found.

(e) Invocation of Timeframe Exceptions:

The number and percentage of complaints and the number, percentage and identity of compliance reviews placed in the 20 percent exception provisions set forth in ¶¶ 13 and 18 above within the reporting period by nation, region, basis and reason.

(f) Invocation of Tolling of Timeframe Provisions:

Separately concerning each of the tolling provisions set forth in ¶ 19 above, the number of complaints and the number and identity of compliance reviews in which the timeframes were tolled within the reporting period by nation, region, basis and reason.

25. Transition Period: Concerning the one year transitional provisions set forth in ¶ 1 above, defendants shall provide reports to the parties seven months and thirteen months from the date of this Order. The reports shall show (broken out by cases investigated and not investigated

as of the date of the Order): the number of affected complaints and the number and identity of affected compliance reviews, the number whose due date fell within the reporting period, the number of due dates met, the number of due dates missed and the reasons for missed due dates, summarized by region.

26. Annual Reports: Defendants shall provide by October 31 of each year the following:

(a) Quality Assurance Study reports for the preceding year;

(b) Budget figures proposed by OCR to ED, proposed by ED to OMB and approved by OMB for the following fiscal year;

(c) The final appropriation for OCR for the preceding fiscal year and the total amount of that appropriation expended at the end of the fiscal year;

(d) Staffing data for OCR for the preceding fiscal year and projected for the forthcoming fiscal year, including total staff ceiling, number of positions filled and number of positions vacant.

27. If ED has failed to comply with the obligations set forth in this order, an explanation of the specific reasons for the failure to so comply.

28. ED shall make available to plaintiffs and intervenors in Washington, D.C., upon request and with at least two weeks notice, the file of a closed complaint and/or compliance review with confidential material deleted.

PART III: EXECUTIVE ORDER PROVISIONS

29. The foregoing requirements apply to the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL) in enforcing compliance with the sex discrimination provision of Executive Order 11246 at all institutions of higher education covered by said Executive Order and implementing regulations.

A. Definitions

30. A "complaint" is defined as an allegation that an entity receiving federal funds covered by the Executive Order (contractor) has violated the Executive Order and/or the implementing regulations. A "complete complaint" is one which identifies: (a) the complainant by name and address; (b) a general description of those injured by the alleged discrimination (names of the injured person or persons shall not be required); (c) the contractor, educational entity or individual alleged to have discriminated by name and address; (d) the alleged discrimination in sufficient detail to permit DOL to commence an investigation, describing what occurred, when it occurred, and the basis for its occurring (discrimination on the basis of sex). To be complete the complaint need not allege the law or laws being violated.

31. A "compliance review" (including a pre-award review) is an investigation or review (other than one limited to the investigation of a specific complaint) of a contractor undertaken by DOL in order to determine whether the recipient is in compliance with the Executive Order and/or the regulations promulgated thereunder.

B. Timeframes and Procedures for Handling Complaints

32. Nothing in this Order shall preclude DOL or OFCCP from referring Executive Order complaints to the Equal Employment Opportunity Commission (EEOC) under the Memorandum of Understanding between OFCCP and EEOC, 46 Fed. Reg. 7435 (January 22, 1981, Memorandum of Understanding).

33. Within 15 calendar days of DOL's receipt of a complaint, OFCCP shall acknowledge the complaint and advise complainant that if jurisdiction is found, an investigation will be initiated and that the complainant will be contacted by OFCCP before or during the investigation.

34. If a complaint has been determined to be incomplete and the complaint is not completed within 60 days from the initial federal agency receipt of the original complaint, OFCCP shall close the complaint.

35. When the complaint is complete, OFCCP shall conduct a prompt investigation, determine in writing whether a violation has occurred, (see ¶ 36), and notify the complainant in writing of such determination.

36. The written determination of whether a violation has occurred shall address all allegations and issues raised in the complaint and during the investigation. It shall set out DOL's conclusions regarding each allegation and issue, supported by an explanation or analysis of the relevant information on which the conclusions are based and set out an outline of the corrective actions required, if any. If such corrective action is required, the letter of findings must include a determination of noncompliance as the basis for the corrective action. In conducting the investigation, DOL shall interview the complainant and shall develop all information relevant and material to the complaint. During the investigation

whenever DOL anticipates making a partial or total finding adverse to the complainant, DOL shall advise the complainant of evidence supporting the adverse finding either by showing the evidence or by summarizing such evidence. Complainants shall be provided a timely opportunity to respond to such evidence.

37. If DOL determines that a violation has occurred, DOL shall attempt to correct the violation through mediation, conciliation and persuasion. DOL shall also keep the complainant advised of the status of the negotiations as they apply to the remedy being sought for the complainant. If conciliation fails, DOL shall notify the complainant of the determination and conciliation efforts and shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law.

38. DOL shall investigate and resolve all complaints within the following timeframes:

(a) Within 15 calendar days of receipt of a complaint, DOL shall issue the notification required in ¶ 33 above.

(b) Complete Complaints:

(1) If the initial complaint is complete, or upon its completion, DOL shall conduct a prompt investigation to determine whether a violation has occurred. Such determination shall be made in writing within 105 days of receipt of the complete complaint.

(2) If a violation has occurred, DOL shall attempt to bring the educational institution into voluntary compliance through negotiations. If such corrective action is not secured within 195 days of receipt of the complaint, DOL shall initiate formal enforcement action by commencing administrative proceedings or by other means

authorized by law no later than 225 days after receipt of the complete complaint.

39. DOL shall make a preliminary examination of complaints alleging intimidation or retaliation to determine whether the intimidation, coercion, retaliation, etc. are of the nature to require handling of those complaints on an expedited basis.

40. The timeframes for handling complaints set forth herein shall not in any way supersede responsibilities of DOL to meet shorter timeframes (which are therefore fully consistent with this order) set forth in any laws or regulations binding the agency. The Director may grant extensions for processing of complaints through to enforcement action only where good cause is shown, provided such extensions are no longer than the timeframes provided in ¶ 38 above, ¶ 41 below where the exception in ¶ 41 applies, or ¶ 60 below where ¶ 60 applies.

41. In order to allow greater flexibility in the processing of complete complaints requiring longer timeframes than the standard timeframes provided in ¶ 38 above, the following exception with longer timeframes shall apply:

(a) For those complaints not covered by the transitional provisions ¶ 60(a)-(c) below, not more than 20 percent of the complaints received in any fiscal year on a national basis, and not more than 30 percent of the complaints received or handled from any one region shall be excepted from processing in accordance with ¶ 38 above.

(b) DOL shall conduct a prompt investigation of the excepted complete complaints to determine whether a violation has occurred. Such determination shall be made in writing within 195 days of receipt of the complete complaint.

(c) If a violation has occurred, DOL shall attempt to bring the educational institution into voluntary compliance through negotiations. If such corrective action is not secured within 315 days of receipt of the complete complaint, DOL shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law no later than 345 days after receipt of the complete complaint.

C. Compliance Reviews

42. DOL shall conduct an appropriate number of compliance reviews in each fiscal year of institutions of higher education, which are geographically dispersed throughout the country, to ensure adequate enforcement of the sex discrimination provisions of the Executive Order. In addition, DOL shall conduct pre-award reviews to determine whether an educational institution is currently in compliance with Executive Order requirements before each federal contract of over $1 million is awarded. Such pre-award reviews shall be conducted on-site unless an on-site compliance review has been conducted at the institution within 12 months prior to the award.

D. Compliance Review Procedures and Timeframes

43. (a) In conducting a compliance review or pre-award compliance review, DOL shall investigate and resolve all Executive Order sex-based complaints against the institution of higher education on file with OFCCP at the commencement of the investigation. If, however, the OFCCP Assistant Regional Administrator in charge of the review determines and documents as part of the compliance review report that resolution of

an individual complaint may delay completion of the pre-award review, the individual complaint may be deferred and the review concluded. The processing of each deferred individual complaint shall be concluded within the timeframes set forth in ¶ 38 herein.

(b) In conducting the review, DOL shall also request and examine computer tapes requested from and provided by EEOC which summarize complaints alleging discrimination against the institution of higher education being reviewed on file with EEOC at the commencement of the review. DOL shall also examine all employment discrimination complaints on file with ED filed under Title IX against the institution being reviewed. In addition, in accordance with paragraph 6 of the Memorandum of Understanding, DOL shall ascertain whether any unresolved systemic complaints of discrimination against the institution are pending with the EEOC. The subject matter of such systemic EEOC complaints shall be considered during such pre-award review. If these investigations indicate systemic noncompliance, such noncompliance shall be resolved in the review. However, any such investigation and findings are not intended to affect the consideration of such complaints by EEOC.

(c) For the purposes of this Part, class or systemic Executive Order complaints include those complaints which allege violations affecting more than one job and a number of employees. Individual complaints, on the other hand, are limited in scope and generally to one individual; they also tend to be isolated instances of discrimination

44. In conducting a compliance review, other than a pre-award review: (a) Within 90 days of the date that a compliance review commences, DOL shall determine whether the contractor is in compliance with the Executive Order and regulations thereunder, including the submission

to DOL of an Affirmative Action Plan which meets the requirements of ¶ 52 herein; (b) if the contractor is in compliance, DOL shall notify the contractor of those specific issues for which a finding of compliance has been made; (c) if, with respect to the issues covered in the review, the contractor is not in compliance, the letter of findings shall set forth the specific reasons therefor, and an outline of the corrective action required. If such corrective action is required, the letter of findings must include a determination of noncompliance as the basis for the corrective action. DOL shall attempt to secure voluntary compliance, including, if necessary, the issuance of a show cause notice; and (d) if compliance cannot be secured voluntarily within 180 days of the commencement of the review, DOL shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law within 210 days of the commencement of the review. If an on-site investigation is scheduled, the timeframes set forth in this paragraph shall run from the date that DOL commences the investigation at the site of the contractor. If no on-site investigation is conducted the timeframes shall run from the date DOL requests information from the contractor.

45. The timeframes for handling compliance reviews set forth herein shall not in any way supersede responsibilities of DOL to meet shorter timeframes set forth in any laws or regulations binding the agency except that the Director of OFCCP may for good cause shown grant extensions of time for processing of the compliance review through to referral for enforcement action provided that such extensions are no longer than the timeframes provided in ¶ 44 above, ¶ 47 below where the exception in ¶ 47 applies, or ¶ 60 where ¶ 60 applies.

46. In the course of the compliance review, DOL shall afford employees of the contractors a full and timely opportunity to present information to DOL regarding the subject of the contractor's compliance with the Executive Order.

47. In order to allow greater flexibility in the processing of compliance reviews requiring longer timeframes than the standard timeframes provided in ¶ 44 above, an exception with longer timeframes shall apply:

(a) For those compliance reviews not covered by transitional provision ¶ 60(a)-(c) not more than 20 percent of the compliance reviews conducted in any fiscal year on a national basis, and not more than 30 percent of the compliance reviews conducted by any one region shall be excepted from processing in accordance with the timeframe requirements of ¶ 44 above.

(b) Within 180 days of the date that a compliance review within this exception commences, DOL shall determine whether the contractor is in compliance with the Executive Order with respect to the issues investigated during the review. If the affected institution is not in compliance, DOL shall seek corrective action through negotiations. If such corrective action is not secured within 300 days of the commencement of the review, DOL shall initiate formal enforcement action by administrative proceedings or by other means authorized by law no later than 330 days after commencement of the review. If an on-site investigation is scheduled, the timeframes set forth in this paragraph shall run from the date that DOL commences the investigation at the site of the contractor. If no on-site investigation is conducted, the timeframes shall run from the date DOL requested information from the contractor.

48. **Limited Tolling of Timeframes:** The timeframes for processing complaints and compliance reviews set forth in ¶¶ 38, 41, 44, 47 above and ¶ 60 below shall be tolled under the following conditions:

(a) Witness Unavailability Caused by Extended Absence: If any person whose testimony is material and relevant to the allegation is unavailable by reason of any extended absence (e.g., summer recess, sabbatical or illness) so that DOL is unable to complete the investigation within the timeframes specified in ¶¶ 38, 41, 44, 47 and 60, such timeframes shall be tolled during the period of the witness' absence. DOL shall set a specified date for completion of the investigation, which shall be no more than the time remaining in the applicable old timeframe before the timeframe was tolled.

(b) Court Order: If a court order prevents the processing of a complaint or compliance review, the applicable timeframes shall be tolled during the pendency of the court order.

(c) Pending Litigation: If the Director of OFCCP determines that pending litigation involving the same contractor and the same issues as are the subject of a compliance review or complaint prevents or makes inappropriate processing of the complaint or compliance review, the applicable timeframe shall be tolled during the pendency of the litigation.

(d) Denial of Access to Information: If the institution refuses to allow an investigation to be conducted, or without good cause refuses to supply records or other materials which are necessary, material and relevant and without which the investigation cannot go forward, within 60 days of DOL's request to do so, DOL shall attempt to secure voluntary compliance within 120 days of the request. If compliance cannot be secured voluntarily, DOL shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law within 120 day of the request, unless the Director of OFCCP determines that the failure to provide access or supply records or other materials should be joined in an enforcement action of the substantive issues involved in the investigation. Where the information access issue is joined with the substantive issues, the timeframes set forth in ¶¶ 38, 41, 44, 47 and 60 shall apply. Where the information access issue is not joined with the substantive issues the timeframes provisions set forth in ¶¶ 38, 41, 44, 47 and 60 shall be tolled until the information is obtained.

49. Pre-Award Reviews: A pre-award determination that an educational institution is currently in compliance with Executive Order requirements shall be made before each contract of over $1 million is awarded. Such a finding shall include but not necessarily be limited to a determination that:

(a) alleged sex discrimination violations have been resolved in accordance with ¶ 43 above;

(b) the contractor is in compliance with its obligation to have an approved Affirmative Action Plan (as that term is defined in ¶ 52 below); and

(c) the contractor has complied with the terms of its affirmative action program after a review of such information.

50. If the terms of ¶ 49 are not met, DOL shall take action in accordance with the provisions of 41 C.F.R. § 602.2(b) to limit the award of contracts to educational institutions found not to be in compliance with ¶ 49 until the educational institution comes into compliance therewith.

51. OFCCP shall develop and implement a system for contracting agencies to notify OFCCP of contracts in excess of $10,000 awarded to institutions of higher education, and for monitoring whether adequate notice is being given to OFCCP to permit a pre-award review to be conducted before award of contracts of $1 million or more. Such system shall be in operation by the end of 1983.

E. Executive Order Affirmative Action Plan

52. DOL shall require each institution which must maintain an affirmative action plan (AAP), including annual updates thereof, to meet all the requirements of the Executive Order and regulations concerning an AAP and to submit such AAP to DOL within thirty days of a DOL request for submission.

53. If a contractor refuses to submit an AAP within 30 days of DOL's request to do so, DOL shall issue a 30 day show cause notice within 40 days of the request unless other enforcement action authorized by law is to be taken. Subject to the provisions of ¶ 55 below, if a show cause notice is issued and good cause is not shown, OFCCP shall initiate formal enforcement action by commencing administrative proceedings or by other means authorized by law within 90 days of the request.

54. In the course of the AAP review, DOL shall afford employees of the contractor a full and timely opportunity to present information to DOL regarding the subject of the plan's compliance with the Executive Order.

F. Withdrawal of Show Cause Notice

55. A show cause notice, issued by DOL as set forth herein, shall not be withdrawn unless the standards and procedures set forth in the OFCCP Memorandum of April 18, 1977 to Heads of All Agencies are met.

G. Recordkeeping

56. DOL shall maintain current EEO-6 data, or any successor data providing a workforce breakdown, and shall make such information available to members of the public pursuant to a request.

57. Commencing within one year after the entry of the Order, DOL shall maintain a complete and current list of all educational institutions covered by the Executive Order by state and in alphabetical order, the amounts of the contracts, and the contracting federal agencies. Such lists shall be made available to the public.

58. DOL shall maintain adequate records for determining the number and status of complaints, compliance reviews and affirmative action plan reviews under the Executive Order.

H. Notice to Public

59. DOL shall publish in the Federal Register within 30 days after the effective date of this Order the full terms of this Order.

I. Provisions for Transition Period

60. The complaints and compliance reviews pending at the date of entry of this Order which have not been processed within the timeframes required by the December 29, 1977 Order, shall be processed in accordance with the provisions in this paragraph:

(a) DOL shall resolve (process to the final enforcement stage, if applicable) all complaints and compliance reviews in which investigations have been completed within 90 days of the date of entry of this Order.

(b) DOL shall resolve all complaints and compliance reviews in which investigations have not been completed within 180 days of the date of entry of this Order.

(c) However, DOL may resolve up to twenty percent of the total number of these pending complaints and compliance reviews as late as one year from the date of entry of this Order.

(d) All complaints and compliance reviews which have been processed in accordance with the timeframe provisions of the 1977 Order may be processed in accordance with the timeframe provisions as modified in Part III of the Order.

61. For those long-pending complaints in which investigations have been effectively suspended, DOL shall for 60 days make reasonable efforts to notify the complainant that DOL is now prepared to process the complaint. If after reasonable efforts are made, DOL is unable to locate the complainant or the complainant does not wish to pursue the allegation, the complaint may be closed.

J. Reporting

62. Twice a year on April 30 (for October 1, through March 31) and on October 31 (for April 1 through September 30) DOL shall provide plaintiffs information which may be supplied by computer printouts, showing its enforcement activities under the Executive Order for institutions of higher education which occurred in the previous two quarters of the fiscal

year, as follows:

(a) Summaries showing by region for each six month period: (1) the total number of complaints received; (2) the total number of complaints pending at the beginning of the period; (3) the total number of complaints pending at the end of the period; (4) the total number of complaints closed during the period; (5) the total number of complaints closed because no violation was found; (6) the total number of complaints where findings of violations were made; (7) the total number of complaints closed after corrective action was secured; (8) the total number of cases where DOL initiated enforcement action. Such report need not include any complaints which were on file with EEOC and investigated during compliance reviews.

(b) For each complaint received or unresolved: (1) identification of the complaint by log number and date of initial receipt; (2) the institution against whom the complaint was filed; (3) the substantive allegations raised in the complaint; (4) whether it is a retaliation complaint; (5) the date of acknowledgement of receipt pursuant to ¶ 33; (6) the date a letter of findings was sent and whether or not a violation had occurred; (7) the date corrective action was secured or negotiations were terminated; (8) the date that DOL commenced formal enforcement action.

(c) For each compliance review pending or closed in the previous two quarters: (1) the identity of the institution; (2) whether the contractor's AAP was requested as part of the review and the date the AAP was requested; (3) whether conducted as an on-site or off-site investigation; (4) if on-site, the date on-site investigation was started; (5) the issues covered in the compliance review (e.g., salaries; recruitment, promotion policies, compliance with AAP); (6) whether the AAP was approved; (7) the date a letter of findings was sent determining whether a violation had occurred; (8) whether or not a violation was found; (9) the date a show cause letter was sent; (10) the date corrective action was secured or negotiations were terminated; (11) if applicable, the date that DOL initiated formal enforcement action.

(d) For each contract of over $1 million on which a federal agency requested a pre-award determination with regard to an educational institution, in the previous two quarters: (1) the identity of the institution; (2) the agency requesting the determination; (3) the amount of the contract, if known to DOL; (4) the date the contracting agency informed DOL that the contract was to be let; (5) the dates that DOL conducted its pre-award review; (6) the date that DOL determined whether the recipient was in compliance; (7) the determination by DOL of whether the recipient was in compliance; (8) if the recipient was not in compliance, the action taken by DOL and the date thereof.

(e) If DOL failed to comply with the timeframes or other obligations set forth in this Part, an explanation of the specific reasons for the failure to so comply.

63. The number, percentage and identity of complaints and compliance reviews placed in the 20 percent exception provisions set forth in ¶¶ 41 and 47 above within the reporting period by nation, region and reason

64. Separately concerning each of the tolling provisions set forth in ¶ 48 above, the number and identity of complaints and compliance reviews in which the timeframes were tolled within the reporting period by nation, region and reason.

65. Concerning the one year transitional provisions set forth in ¶ 60 above, defendants shall provide reports to plaintiffs seven months and thirteen months from the date of this Order. The reports shall show (broken out by cases investigated and not investigated as of the date of the Order): the number and identity of affected complaints and compliance reviews, the number whose due date fell within the reporting period, the number of due dates met, the number of due dates missed and reasons for missed due dates, summarized by region.

66. Defendants shall provide by October 31 of each year the following:

(a) Budget figures proposed by OFCCP to DOL, proposed by DOL to OMB and approved by OMB for the following fiscal year;

(b) The final appropriation for OFCCP for the preceding fiscal year and the total amount of that appropriation expended at the end of the fiscal year;

(c) Staffing data for OFCCP for the preceding fiscal year and projected for the forthcoming fiscal year, including total staff ceiling, number of positions filled and number of positions vacant.

67. DOL shall make available to plaintiffs in Washington, D.C., upon request and with at least two weeks notice, the file of a closed complaint, pre-award review, compliance review, and/or affirmative action plan review with confidential material deleted.

PART IV: COSTS AND ATTORNEYS' FEES

Plaintiffs and intervenors are entitled to costs (including deposition costs) in connection with the monitoring of the December 29

1977 Order and the entry of the instant Order. Plaintiffs and intervenors are also entitled under 28 U.S.C. § 2412 and 42 U.S.C. § 1988 to the award of reasonable attorneys' fees in connection with the monitoring of the December 29, 1977 Order and the entry of the instant Order. Applications for award of costs and fees shall be filed within 60 days unless resolved by settlement.

J. H. Pratt
John H. Pratt
United States District Judge

March 10, 1983.

FILED
MAR 24 [illegible]
JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KENNETH ADAMS, *et al*.,
Plaintiffs,

v.

TERREL H. BELL, SECRETARY OF EDUCATION, *et al*.,
Defendants.

Civil Action No. 3095-70

ORDER

The Court has considered plaintiffs' Renewed Motion for Further Relief Concerning State Systems of Higher Education, defendants' opposition thereto, plaintiffs' reply, the oral arguments of counsel and the entire record herein. Based thereon, the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Arkansas, Georgia, Virginia, Oklahoma, Florida and North Carolina*

A. Findings

1. The Revised Criteria Specifying the Ingredients of Acceptable

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*/ All references to North Carolina relate to the state's community college system only.

Plans to Desegregate State Systems of Public Higher Education, 43 Fed. Reg. 6658 (February 15, 1978)(the Criteria) require each of the above states to desegregate its system of public higher education over a five year period culminating in the 1982-83 academic year.

2. In 1978 and 1979 the Department of Health, Education and Welfare (HEW) accepted plans to desegregate formerly de jure segregated public higher education systems from Arkansas, Florida, Georgia, Oklahoma, and Virginia, and from North Carolina's community college system. The plans expire at the end of the 1982-83 academic year.

3. Each of these states has defaulted in major respects on its plan commitments and on the desegregation requirements of the Criteria and Title VI. Each state has not achieved the principal objectives in its plan because of the state's failure to implement concrete and specific measures adequate to ensure that the promised desegregation goals would be achieved by the end of the five year desegregation period.

4. Since 1980 defendants have written repeated "evaluation" letters to each of the states, setting forth in great detail their defaults under the plans and requesting that the states take corrective measures. In January, 1983 defendants again notified each state of its default and requested each state to submit, within 60 days, new measures in the form of addenda to the plans on file, which will address the deficiencies listed in the evaluation letters and any other matters needed to make the plans complete and effective.

5. To avoid further delay in achieving full compliance with state plans and in desegregating state systems of higher education, defendants must ensure that prior to the commencement of the 1983-84 academic year, each state has committed itself to concrete and specific measures that reasonably ensure compliance no later than the fall of 1985. To the extent possible, those measures must be implemented by the fall of 1983. Where legislative action or other requirements dictate the need for additional time, the measures must be in place at the latest by the fall of 1984.

6. In January, 1983 the Office of Civil Rights (OCR) provisionally approved amendments to the Virginia Plan, extending for three years (until the end of the 1985-86 academic year), the time within which said state must achieve its planned desegregation goals.

B. Injunction

Defendants, their successors, agents and employees, are enjoined:

1. With respect to Arkansas, Georgia, Oklahoma, Florida and North Carolina, to require each state to submit by June 30, 1983 a plan containing concrete and specific measures that reasonably ensure that all the goals of its 1978 desegregation plan will be met no later than the fall of 1985; and to commence, no later than September 15, 1983, formal Title VI enforcement proceedings against any state which has failed to submit a plan containing concrete and specific measures reasonably ensuring achievement of the state's goals and commitments contained in its 1978 plan no later than the fall of 1985.

2. For each state which has submitted a plan which defendants find reasonably ensures achievement of the state's goals as stipulated in its 1978 plan, to require such state to submit to defendants all appropriate data concerning its performance during the 1983-84 academic year no later than February 1, 1984.

3. To evaluate said data by April 1, 1984 to determine whether the state has achieved substantial progress toward the goals of its plan during the 1983-84 academic year.

4. With respect to said first tier states, which have submitted acceptable plans pursuant to Paragraph B.1., *supra,* as well as Virginia, to commence not later than September 15, 1984 formal Title VI enforcement proceedings against any state which has failed to achieve substantial progress in the 1983-84 academic year.

II. Pennsylvania, Texas and Kentucky

A. Findings

1. In its Second Supplemental Order issued April 1, 1977, the Court found that desegregation plans from *inter alia*, Pennsylvania, and approved by defendants, "did not meet important desegregation requirements and . . . failed to achieve significant progress toward higher education desegregation." *Adams v. Califano*, 430 F. Supp. 118, 119 (D.D.C. 1977). The Court, however, deferred consideration of Pennsylvania's noncompliance with Title VI because of pending negotiations between that state and HEW with particular reference to Cheyney State College. *Id.*, at 120.

2. In January, 1981, defendants notified Pennsylvania that it had failed to submit an adequate desegregation plan and required the submissi of such a plan within 60 days. Defendants also notified Pennsylvania that they would evaluate the state's submission within 60 additional days and would commence formal enforcement proceedings against the state in May, 1981, if the state's submission failed to comply with Title VI, in accordance with a previous order of this Court. Pennsylvania was directed to include within such remedial plan the "state-related" institutions of Pennsylvania State, University of Pittsburgh, Temple University and Lincoln University, as well as the state's 13 community colleges.

3. Pennsylvania has refused to submit a desegregation plan which in defendants' judgment complies with Title VI and has refused to include the institutions referred to in the preceding paragraph in such a plan. Defendants, however, have failed to commence formal enforcement proceedings against the state.

4. Under the Order of this Court entered December 18, 1980 (¶ 1), defendants were required to commence enforcement proceedings against Texas within 120 days of finding that the state had not eliminated the vestiges of its former de jure segregated system of higher education unless an acceptable plan of desegregation was submitted.

5. In January, 1981, defendants found that Texas had failed to eliminate the vestiges of its former dual system.

6. At that time defendants also provisionally accepted a desegregation plan from Texas contingent upon the state's submission by June 15, 1981 of certain additional commitments required to desegregate the system fully.

7. Texas has still not committed itself to the elements of a desegregation plan which in defendants' judgment complies with Title VI. Defendants have failed to commence formal enforcement proceedings against the state.

8. The Texas legislature meets once per biennium. Once the current session closes, it is not scheduled to reconvene until 1985. The assistance of the Texas legislature will be necessary to arrange funding to implement the commitments made by the State of Texas to desegregate its system of higher education.

9. Despite this Court's Order of September 17, 1981, requiring a resolution of Kentucky's compliance status by January 15, 1982, Kentucky's desegregation plan was only provisionally accepted by defendants on January 29, 1982 contingent upon the state's submission by August 31, 1982 of certain additional commitments and actions. Certain of those commitments and actions were not forthcoming from Kentucky as of August 31, 1982.

10. OCR has still not received a desegregation plan from Kentucky which in defendants' judgment complies with the Criteria and Title VI. Defendants have failed to commence formal enforcement proceedings against the state.

B. Injunction

Defendants, their successors, agents and employees are enjoined, within 120 days from the date of this Order, to commence formal Title VI enforcement proceedings against Pennsylvania and Kentucky unless defendants conclude that those states have submitted desegregation plans which fully conform to the Criteria and Title VI. Pennsylvania's plan shall encompass each of the state-related institutions as well as the state's community colleges. Defendants, their successors, agents and employees are enjoined to commence formal Title VI enforcement proceedings against Texas within 45 days from the date of this Order unless defendants conclude that Texas has submitted a desegregation plan in full conformity with the Criteria and Title VI.

III. West Virginia, Missouri and Delaware

A. Findings

1. Since January, 1981 OCR has accepted higher education desegregation plans from West Virginia, Missouri and Delaware.

2. OCR's investigations and letters of findings established that the last remnants of the formerly segregated systems of public higher education in West Virginia and Missouri were limited to the University of West Virginia and three institutions in Missouri. The plans from those two states included only those institutions.

3. While the United States Court of Appeals for the District of Columbia Circuit stated that "[t]he problem of integrating higher education must be dealth with on a state-wide rather than a school-by-school basis", Adams v. Richardson, 480 F.2d 1159, 1164 (D.C.Cir. 1973), we are satisfied that the Court made reference to "system-wide imbalance." Only one institution in West Virginia and three in Missouri were found to be racially identifiable and were

therefore properly included in the state plan. There has been no showing of "system-wide imbalance." The decision not to include the remaining institutions in the state plan involves a judgment, which OCR, in its discretion, was entitled to make.

4. In the January, 1983 evaluation letters to West Virginia and Missouri, OCR noted that both states, for the most part, were successful in their efforts to meet the goals and objectives of the first year of their plans. In the course of implementing their plans, both states took into account institutions not within the states' plans.

5. The plan from Delaware accepted by OCR was state-wide in effect.

6. The plans accepted from West Virginia, Missouri and Delaware by OCR comply with the requirements of the law and with respect to said states, plaintiffs are entitled to no relief.

IV. Reporting

A. Findings

Defendants are presently not required by any Order of this Court to report systematically to plaintiffs concerning their Title VI enforcement with respect to public higher education desegregation relating to the within named states. Such reporting in the future will facilitate monitoring of compliance with the Orders of this Court and with Title VI requirements.

B. Injunction

Defendants, their successors, agents and employees, are enjoined to provide the following to counsel for the plaintiffs or their designated agent:

1. Copies of all desegregation plans or amendments to previously approved plans at least 10 days in advance of defendants' final approval of such plans or amendments in order to permit plaintiffs to submit written objections with respect thereto.

2. Copies of the annual statistical reports and the annual narrative reports from the states within 10 days of their receipt by defendants.

3. Copies of OCR's written evaluations of the states' compliance with their plans, and the states' responses thereto within 30 days of the receipt of said responses.

4. Copies of OCR's letters of findings arising from compliance reviews or complaints concerning public higher education institutions within 10 days of the transmittal of such letters to the states or institutions.

J. H. Pratt
John H. Pratt
United States District Court

March 24th, 1983.

APPENDIX L

LETTER OF COBB COUNTY PUBLIC SCHOOLS TO DEPARTMENT OF EDUCATION (GROVE CITY)

cobb
county
public
schools

Dr. Thomas E. Tocco

Board of Education
Harold Posey, Chairman
Carolyn Duncan, Vice-Chairman
Bill Bass
John Davidson
Duff S. Greene
Bill Raybon
Ben Shaw

13 JUN 86 7:52 Z

u Jerome

June 10, 1986

Mr. Stan Kruger, Director
Impact Aid Division
U. S. Department of Education
400 Maryland Avenue, S.W.
Washington, D. C. 20202-6272

In Re: Withdrawal of Application for School Assistance in Federally Affected Areas, Title I, P.L. 81-874 - 1986

Dear Mr. Kruger:

The Cobb County Board of Education has taken official action to rescind the Cobb County School District's application for School Assistance in Federally Affected Areas under Title I of P.L. 81-874 for 1986 and all succeeding years. This action has been taken in order to bring the Cobb County School District into compliance with the United States Supreme Court's decision in Grove City College v. Bell, 104 S.Ct. 1211 (1984) which held that jurisdiction of the United States Department of Education was program specific unless Impact Aid Funds were accepted by a school district.

The Cobb County School District's DIA Application Number is 20-GA-86-E-0009 and was submitted on January 13, 1986 for funding.

We have enclosed a check made payable to the United States Department of Education for $91,844.53, reflecting full refund of 1986 appropriated funds under this application, and furthermore, request that all 1986 funding be terminated.

If there are any questions concerning this request, please contact Mr. Bill Rogers at 426-3310.

Sincerely yours,

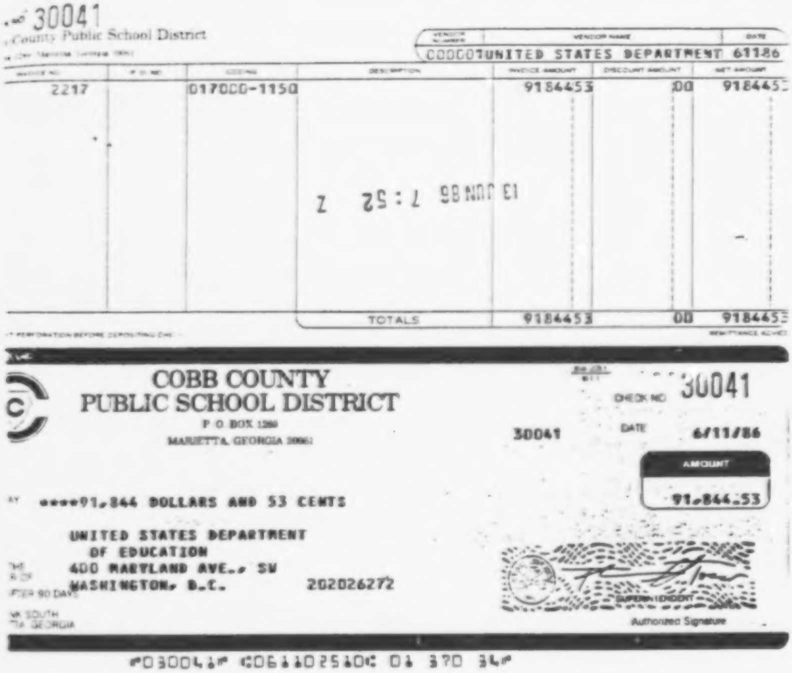
Thomas E. Tocco
Superintendent

js

Enclosure (check)

cc: Bill Rogers
Steve Cantrell

Post Office Box 1088 • Marietta, Georgia 30061 • Telephone: (404) 422-9171



30041
County Public School District

VENDOR NUMBER	VENDOR NAME	DATE
00000	UNITED STATES DEPARTMENT	61186

INVOICE NO.	P.O. NO.	CODING	DESCRIPTION	INVOICE AMOUNT	DISCOUNT AMOUNT	NET AMOUNT
2217		017000-1150		9184453	00	918445
			TOTALS	9184453	00	918445

13 JUN 86 7:52 Z

COBB COUNTY
PUBLIC SCHOOL DISTRICT
P. O. BOX 1260
MARIETTA, GEORGIA 30061

CHECK NO 30041

30041 DATE 6/11/86

AMOUNT 91,844.53

AY ****91,844 DOLLARS AND 53 CENTS

UNITED STATES DEPARTMENT
OF EDUCATION
400 MARYLAND AVE., SW
WASHINGTON, D.C. 202026272

FTER 90 DAYS

SUPERINTENDENT
Authorized Signature

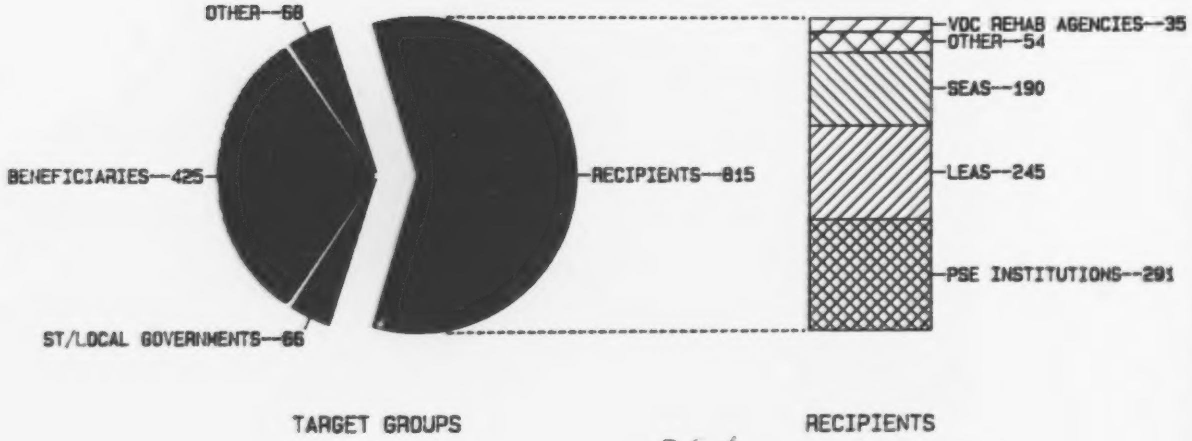
030041 061102510 01 370 34

APPENDIX M

TECHNICAL ASSISTANCE

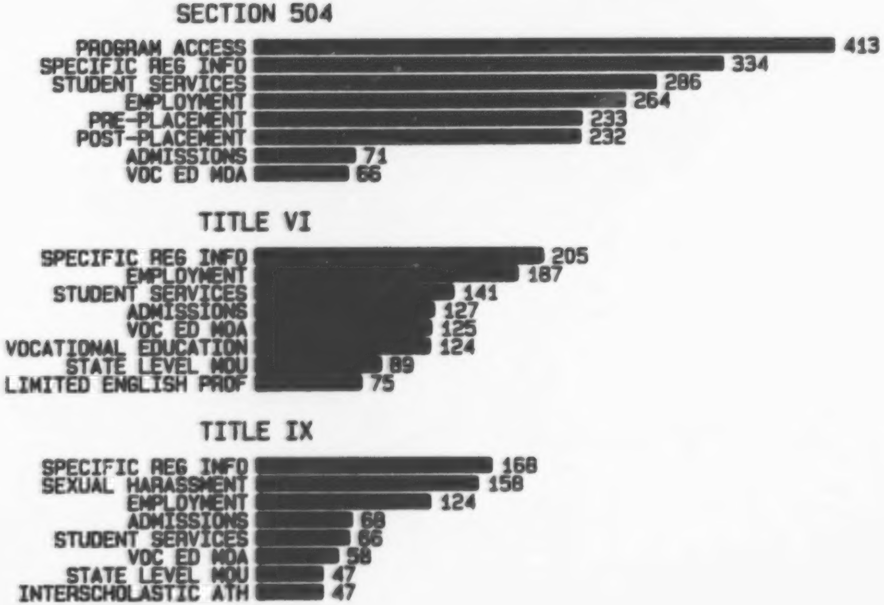
SOURCE: OCR, FY 1987 ANNUAL REPORT

TECHNICAL ASSISTANCE REQUESTS BY TARGET GROUP DURING FISCAL YEAR 1987



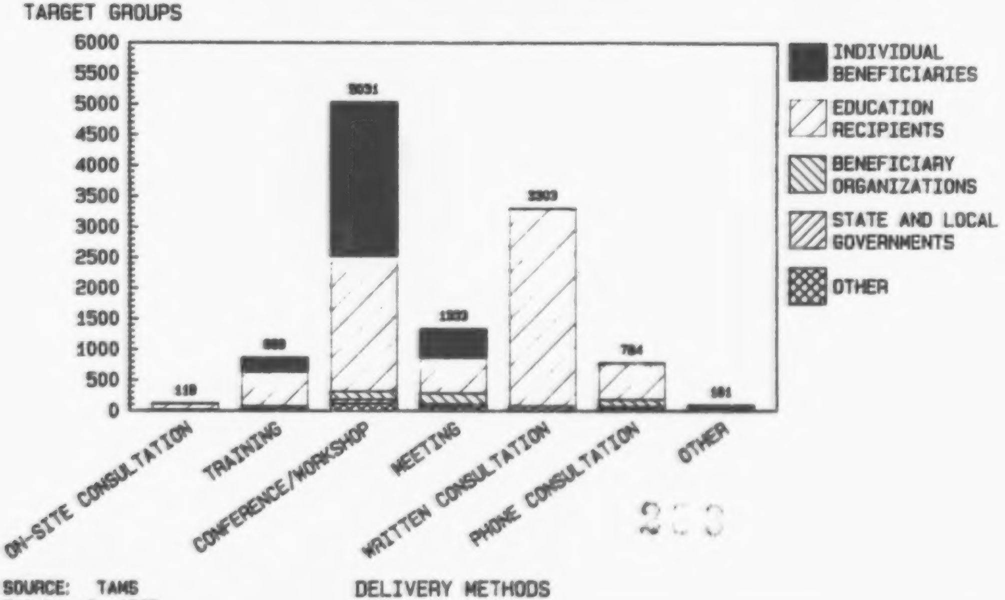
SOURCE: TAMS
October 8, 1987

THE MOST FREQUENT TECHNICAL ASSISTANCE ISSUES ADDRESSED BY REGIONS I-X, BY BASIS, DURING FISCAL YEAR 1987



SOURCE: TAMS
October 8, 1987

NUMBER OF GROUPS AND INDIVIDUALS THAT RECEIVED TECHNICAL ASSISTANCE, BY DELIVERY METHOD, DURING FISCAL YEAR 1987



SOURCE: TAMS
October 8, 1987

APPENDIX N

OCR COMMENTS ON THE COMMITTEE REPORT

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

NOV 7 1988

Honorable Augustus F. Hawkins
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hawkins:

This is in response to your letter of October 26, 1988, forwarding a draft report prepared by the majority staff of the Committee on Education and Labor, U.S. House of Representatives. The report is the result of a study of the activities of the Office for Civil Rights (OCR) initiated in November 1987, not long after I began my tenure as Assistant Secretary for Civil Rights. When the Committee staff first contacted OCR a year ago, I hoped that this report would offer a constructive basis for a dialogue about OCR. I looked forward to a comprehensive, objective report, which would provide me with useful insights on OCR's operations as an agency and with thoughtful recommendations.

I am disappointed by your staff's draft report. It is replete with inaccuracies and misconceptions of OCR's role. It appears that after almost one year of studying OCR, the Committee's majority staff does not understand how this agency must function under the statutes we enforce and which govern our operations.

I have found that the draft report:

1. misrepresents OCR's investigative and enforcement procedures;

2. displays a lack of understanding of the case-handling process;

3. distorts the statistical evidence on OCR's case-processing activities, and draws unsubstantiated conclusions;

4. ignores OCR's sound policy development and dissemination procedures;

400 MARYLAND AVE. S.W. WASHINGTON D.C. 20202

5. misconstrues the agency's procedures for ensuring the legal sufficiency of decisions involving complex and far-reaching issues;

6. mistakenly measures OCR's performance by focusing on input factors, such as annual appropriations and employment levels, instead of productivity factors, such as complaint investigation rates and improved performance in meeting time frames.

As you well know, OCR investigates all complaints within the agency's jurisdiction and has an excellent record in doing so. During the time period covered by the majority staff's report, fiscal years 1981 through 1988, OCR initiated 11,095 complaint investigations (including 1,916 during the twelve months of fiscal year 1988), eliminated a backlog of cases carried over from the previous Administration, and improved the case-processing procedures in all regional offices.

OCR has avoided lengthy and unnecessary delays in providing relief to complainants through the highly successful pre-Letter of Findings (pre-LOF)* negotiations process which results in corrective actions for identified violations. Violations found through compliance reviews have also been successfully resolved in pre-LOF negotiations in those cases in which recipients are willing to comply with the law without protracted enforcement proceedings. OCR has found pre-LOF settlements to be an effective, legally supportable practice and believes that criticisms leveled at this activity by the majority staff are unjustified. As a further safeguard to the interests of complainants, OCR provides a two-level appeal process for complainants who are not satisfied with OCR's findings.

Technical assistance activities, which are mentioned often in the report, are designed to provide advice and information on the rights of beneficiaries and the responsibilities of recipients of Federal financial assistance under the Federal civil rights statutes. Technical assistance complements the complaint investigation and compliance review functions but is distinct from, and should not be confused with, these functions.

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* A Letter of Findings is the formal statement of facts and conclusions of law issued by OCR at the end of a complaint investigation or compliance review. A Letter of Findings must include a finding of (1) a violation, (2) a violation corrected or (3) no violation of the civil rights statutes and regulations enforced by OCR.

Contrary to statements in the majority staff's draft report, OCR headquarters office has developed and disseminated a substantial body of policy over the past several years. All legal decisions on cases sent to the national office are based on careful and thorough legal research, and these decisions are issued in writing to the appropriate regional office. OCR continues to initiate enforcement proceedings when recipients fail to comply voluntarily with civil rights laws.

I am proud of the record of the approximately 800 dedicated career OCR employees in enforcing the Federal civil rights laws. All productivity indicators have shown increasingly superior performance by OCR staff compared to each previous year.

I will consider preparing a more detailed response to the draft report. I am reluctant to allow the inaccuracies and misunderstandings in the draft report to stand without rebuttal. In view of the length of your report, OCR cannot prepare a detailed response by November 9. However, if your report is published prior to our preparation of a detailed response, I request that this response be included.

Sincerely,

LeGree S. Daniels

LeGree S. Daniels
Assistant Secretary
for Civil Rights

cc: Secretary Lauro F. Cavazos
Hon. James M. Jeffords
Hon. William F. Goodling